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THE SOLICITORS' JOURNAL.

LONDON, JULY 6, 1861.

CURRENT TOPICS.

We refrained last week from giving currency to the numerous rumours which were then afloat relative to the changes amongst the law officers of the Crown likely to be made in consequence of the promotion of Sir Richard Bethell to the Chancellorship. It was generally reported that Mr. Roundell Palmer was to be made Attorney-General over the head of Sir William Atherton, who was supposed to be not strong enough for the place, and therefore, it was said, must remain Solicitor-General until some vacancy, occurred on the Common Law Bench. It appears, however, that there was no precedent for this strong measure exactly in point; and, contrary to expectation, Sir William Atherton has been appointed Attorney-General, and Mr. Palmer has accepted the lower dignity. There can be no doubt that his appointment will give general satisfaction. For some time he has probably made a larger income—apart from official sources—than any member of the bar on either side of Westminster Hall. He has been not only the unquestionable leader of a most important and lucrative branch of the Court of Chancery, but has had the largest amount of business, both in the Chancery Appellate Court, and also in the House of Lords, and the Privy Council. Being, moreover, a good speaker and a tried member of Parliament, of high reputation, he is calculated to be a very serviceable law officer of the Crown, and his appointment is entirely creditable to the Government, who seem to have been anxious only to secure the best man for the vacant office.

We mentioned last week that a number of memorials had been presented to Sir Cresswell Cresswell by various law societies in London and throughout the country, for the purpose of obtaining the abrogation of the new Order of the Court of Probate for converting the district registries into so many speculative government law agencies. We give two of these memorials at length; they may be taken as containing a fair account of the question at issue. Similar memorials have come from the law societies of Liverpool, Birmingham, Hull, Leicester, and also of Kent, Lincolnshire, and Yorkshire, as well as one from Bristol, signed by eighty-five solicitors practising in that city. The following is the memorial of the Metropolitan and Provincial Law Association:—

That the Metropolitan and Provincial Law Association is composed of nearly 800 practising attorneys and solicitors in England and Wales, of whom nearly 600 are provincial practitioners.

That in consequence of the grievances of which the provincial members of your memorialists' body had, for some time previous to the issuing of the orders of the 16th of April, 1861, hereinafter mentioned, complained, respecting the practice pursued to their prejudice by the district registrars of the Court of Probate, and the fees taken by such registrars, your memorialists' committee of management entered into extensive correspondence and communication on the subject with solicitors in towns having district probate registries, the result of which showed that some district registrars acted as solicitors in their own courts, others not, but that nearly all charged in some shape or other for the extra trouble entailed upon them in cases of application for probate or letters of administration by parties in person, without the intervention of a proctor, solicitor, or attorney, all to the prejudice of the country solicitors.

That, injurious to them as the system was, the practice which has now succeeded it appears to be still more prejudicial, as, by the said Orders of the Court of Probate dated the 16th day of April, 1861, it is expressly directed that, on and after the 1st day of May last, it shall be part of the duty of the district registrars to prepare affidavits and all other necessary documents for parties applying to them in person, for which a scale of fees in addition to the ordinary office fees is to be charged, but which additional fees are to be considerably less than those authorised to be taken for their own use by proctors, solicitors, or attorneys, when such applications are made through them instead of by the parties in person.

That by the combined operation of these orders, and of the minute of the Lords Commissioners of her Majesty's Treasury, appointing salaries instead of fees as the remuneration of the district registrars, Government offices are established at the expense of the general public to compete (and at lower charges) with the provincial solicitors in the acquisition of business, which, besides being a harsh and unfair course towards them, appears really an impolitic one as regards the public.

That the impolicy, in a public point of view, consists partly in the unduly uniting in the persons of the district registrars the two incompatible and conflicting duties of suitor and judge; for the registrar, having to act in a quasi-judicial character, as the officer who is to decide on the sufficiency or insufficiency of evidence, should not also be charged with the preparation of the documents constituting such evidence. Such a system must be productive of mischief, and is opposed to the first principles of political economy and English jurisprudence.

That such a practice is fraught with further danger to the public from the persons applying in person for probate or administration being necessarily, in most cases, totally unknown to the registrars, while solicitors seldom if ever act for clients who are personally unknown to them, except on the introduction of some third person, of whose position and integrity they have knowledge, by which means a great protection against forgery and other malpractices is obtained, and a considerable guarantee of good faith afforded.

That district registrars are in such cases permitted to administer oaths on affidavits prepared by themselves, though by No. 65 of the rules, orders, and instructions for district registrars, no affidavit is to be deemed sufficient which has been sworn before the party in whose behalf the same is offered, or before his proctor, solicitor or attorney, or before a clerk of his proctor, solicitor, or attorney. Besides being open to the objection against which this rule was framed to guard, the practice affords another unfair facility to the Government offices in their competition with the provincial solicitors, who can scarcely fail gradually to lose the whole of their common form probate business, if the newly instituted *régime* is continued.

That thus to deprive the provincial solicitors of a portion of their business is a breach to their prejudice of the understanding upon which the proctors were enabled by Parliament to be admitted to practise in all branches of the business of attorneys and solicitors.

Your memorialists humbly pray that your lordship will be pleased to take the matters of this memorial into consideration. Signed on behalf of the Association.—J. S. TORR, Chairman.

PHILIP RICKMAN, Secretary.

The Memorial of the Manchester Law Association is as follows:—

The attention of your memorialists has been directed to the orders of the Court of Probate, dated the 16th April, 1861, and to the table of fees directed to be taken in the District Registries of the Court of Probate when applications are made by parties in person, and not through a proctor, solicitor, or attorney.

Your memorialists consider the practice which these orders are manifestly intended to promote—of applying to the district registrars direct, for grants of probate or administration in their own registries—to be contrary to the spirit of the Legislature, prejudicial to the public interests, and invidious and unfair to the provincial solicitor.

1st, Your memorialists submit that the practice is contrary to the spirit of the Legislature, inasmuch as the proper duties of the registrar, with reference to applications for the grant of probate or letters of administration, partake of a judicial character; whereas, when such applications are made to him without the intervention of a solicitor, the registrar is placed in the position of first having to prepare the requisite affidavits and other papers, and then of being the sole judge of the documents so prepared by himself; and in cases requiring special affidavits, or upon questions respecting sureties to administration bonds, the registrar will first have to get up the

necessary evidence, and then be the sole judge of the sufficiency thereof, a course which your memorialists would observe, is directly at variance with that pursued in the principal registry, and is not adopted in connection with any of the courts of law or equity. The district registrars also swear affidavits prepared by themselves, which the solicitors are precluded from doing.

2ndly, Your memorialists submit that the practice is prejudicial to the public, because it takes away one great protection which the intervention of a solicitor provides against fraud. The parties presenting a will to a district registrar, or applying to him to take out an administration, are almost invariably strangers to him, and he has no means of judging of or enquiring into their good faith; whereas a solicitor concerned for them would be acquainted with them, or would learn particulars respecting them before making the application.

As an instance of the necessity of such protection, your memorialists refer to the case of one Ann Dean, deceased, in the district registry at Manchester, in which, upon an application in person probate was granted of a forged will.

The practice is further injurious by fostering a class of agents who act as *quasi* lawyers, and take applicants in person to the registry, where the fees for preparation of the papers by the district registrar are charged, and the parties have in addition to compensate the agent for his trouble, and thus in fact pay an amount nearly, if not quite, equal to the usual scale of professional remuneration, without having the advantage of professional responsibility.

3rdly, Your memorialists submit that the practice is invidious and unfair to the provincial solicitor, by placing him on a different footing from a solicitor or proctor practising in the metropolis, where all business is, by the rules of the principal registry, required to be done through the solicitor or proctor, and by creating competition between the district registry and the provincial solicitor. And they further submit that the practice is a violation prejudicial to the solicitors, of the understanding upon which the proctors were admitted to share in the general business of solicitors, from which admission the public received a benefit in the shape of diminished compensation to the proctors.

Your memorialists therefore pray that the recent orders may be rescinded, and that the practice of the district registries may be assimilated to that of the principal registry, and no applications for probate or administration be allowed to be made in person or through the district registrars of the court to which application is made; but that all such applications be made through the solicitor or proctor of the party applying.

In the *London Gazette* of the 26th ult. there appeared an order in council which brings the West Indian Incumbered Estates Acts into operation in Jamaica. The local act arrived in England about three months ago, and great credit is, no doubt, due to the Legislature of that colony for having adopted a measure similar to that which experience has proved to have been most beneficial in Ireland. Some delay has taken place since the arrival of the Jamaica Act in this country, owing, we believe, to a slight informality in one of its clauses, but so far as that important colony is concerned the measure is now in full operation. This is a matter of interest alike to the legal and the commercial world. The source of our cotton supplies is the question of the day, and it is one that must increase instead of diminishing in importance. Not one-tenth part of Jamaica is cultivated, and it is well-known that both the soil and the climate of that fine island are admirably adapted for the cultivation of the cotton plant. If we can judge from the example of Ireland, we may expect, as a result of the newly-passed Incumbered Estates Acts, soon to witness an influx of fresh energy and capital into the most extensive and valuable of our West India colonies. The islands of St. Vincent and Tobago, with some others, have already adopted these Acts, and the remainder, with the exception of Trinidad and one or two others where Dutch law prevails, will now, doubtless, follow the good example set them. As many of our readers are interested, either directly or indirectly, in West India property, some information as to the practical operation of these Acts may not be unacceptable. The original West India Incumbered Estates Act was passed so far back as the year 1854, the Duke of Newcastle being then, as he is now, Secretary for the Colonies. The measure was borrowed from the Act which had worked so beneficially in Ireland. Like most law amendments, however, the West India Act required itself to be amended. It remained absolutely a dead letter until the year 1857, when the island of St. Vincent first adopted it. Commissioners and a secretary were then appointed. The late Mr. Phipps, Q.C., was the first Chief Commissioner, and Sir Frederick Rogers, now her Majesty's Under Secretary for the Colonies, was Assistant-Commissioner; Mr. R. J. Cust, who has published an excellent handbook of the practice of the Court,* has from the first been Secretary. In 1858, Mr. Phipps died, and Mr. H. J. Stonor, a well known conveyancer, was appointed Chief Commissioner. Shortly afterwards the Amendment Act of 1858 was passed, which has substantially assimilated the West Indian to the Irish Acts. Since then cases of great nicety and difficulty have arisen in the Court and have been carried to the Privy Council, where Mr. Stonor's judgments have been characterized by Lord Kingsdown as "distinguished by remarkable learning and ability."† The West Indian and British interests involved may, therefore, rely with confidence on the able and efficient administration of these important Acts. We believe that Sir F. Rogers still holds the appointment of Assistant-Commissioner, but that he does not assist Mr. Stonor in his *judicial* duties. Should the business of the court increase as we anticipate, we may expect that an acting Assistant-Commissioner will be required, as well as additional officers. The Court, which is now held at 8, Park-street, Westminster, will, we hope, like every other court, before long be removed to Lincoln's-inn. For the present we shall only add that a great opportunity is now afforded, as well to our colonists abroad as to our capitalists at home, of redeeming from waste and neglect our valuable West Indian possessions, and to the legal profession, in both its branches, of co-operating in this good work.

The Legislature of Upper Canada in its last session passed an Act to repeal the laws relative to the registration of judgments in that province. It also enacts amongst other things that "no judgment rule, order, or decree for the payment of money of any court of Upper Canada shall create or operate as a lien or charge upon lands, or any interest therein." And further, that in addition to the statutes repealed by name, "all other statutes and parts and clauses of statutes authorising the registration of judgments, decrees and orders for the payment of money in Upper Canada" are thereby repealed. The Act is to come into operation on the 1st of September next. It has been passed as the best solution of the difficulties and complications connected with the English law of judgments, and the statutory provisions relating to their registration, which to some extent were applicable in the province, and which are found in the old country to be so burdensome as to make many persons desire for England some such sweeping enactment as has been passed by the province of Upper Canada.

We learn from the *Upper Canada Law Journal* that the Law Society of that province has instituted four scholarships for its law students. Each scholarship is to be held for one year only, but any scholar is to be eligible to compete for a senior scholarship in the succeeding year. In Upper Canada persons who are not graduates are obliged to qualify by five years' service under articles, for admission as attorneys, except in the case of

* Cust's "West India Incumbered Estates Acts." London: Amer. 1859.

† *Ex parte Fraser*, 8 Weekly Reporter, p. 376, 29th March, 1860.

university graduates, who must serve at least three years. The scholarships are to be open only to students whose names are standing on the books of the Society, and are as follows:—

£30 scholarship to students under one year.

£40 scholarship to students over one year and under two years.

£50 scholarship to students over two years and under three years.

£60 scholarship to students over three years and under four years.

The subjects for these several examinations have been published, and are so limited as to make us infer that the attainments of the competitors are less than might reasonably have been expected. Compared with the examination which all articled clerks are expected to pass at our Law Institution, the books prescribed for the candidates of the last year are not only very few, but rather more elementary than we should expect, where the prize is really worth having. It has long, however, been a moot point, whether an exhaustive and searching examination in a small number of elementary books, is not a better test of sound and useful intellectual acquisitions than a superficial and necessarily cursory, and somewhat random examination, in a greater variety of books, of a more advanced and formidable character.

A case relating to Irish marriage law and the English law of settlement was decided this week at Warwick before the justices at quarter sessions. It arose upon an appeal, in which the inhabitants of the parish of Leek Woolton were appellants and the inhabitants of the parish of Kenilworth were respondents, in respect to the settlement of one Mary Young. The main question for adjudication was the same as formed one branch of the matrimonial dilemma in which the defendant in the recent case of *Thelwall* v. *Yelverton* in the Irish Court of Common Pleas was involved. The invalidity of a marriage between a Protestant and Roman Catholic, celebrated in Ireland by a Roman Catholic priest, which was so amply discussed in the *cause celèbre* mentioned, formed in the present case the basis of an adjudication on the English law of settlement. The appeal was brought to quash an order of justices respecting the settlement of Mary Young, who was the widow of a soldier. He had acquired a settlement in the parish of Leek Woolton; but it was contended on behalf of the appellants, that this right did not devolve on the present pauper, his reputed wife, inasmuch as her marriage was illegal and void under the Irish Act 19th Geo. 2, c. 13, s. 1. This enactment invalidates all marriages, celebrated by a Roman Catholic priest, where both or either of the parties are Protestants. The soldier was a Protestant, and, in 1846, when quartered in Cashel, was married in the priest's house to the present pauper. The respondent's counsel endeavoured to show that the deceased soldier had made no profession of the Protestant faith within twelve months previous to his death, so as to come within the provisions of the Irish Act, as also that sufficient evidence was not given to prove that the celebrant was a Roman Catholic. As English courts do not take judicial cognizance of Irish statutes passed before the Union, which must, therefore, be proved to those courts as facts, an Irish barrister deposed as to the effect of the Irish law in invalidating mixed marriages; and that the Act of Geo. 2 was still, as regards the parties to such marriages, unrepealed. The statute 22 & 23 Vic., c. 63, referred to *antè*, p. 522, has empowered courts of justice, in an action depending in any part of her Majesty's dominions, to remit a case for the opinion of one of the superior courts in any other part of the British empire. The word "action" is declared by the interpretation clause to "include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical." There is little room, therefore, to doubt that on such cases as the present, English courts of quarter sessions may obtain the opinion of one of the Irish superior courts. The justices at the quarter sessions considered that the evidence clearly disclosed that the deceased soldier had been a Protestant, that the marriage was celebrated by a Roman Catholic priest, and that, consequently, there was no room for the application of the maxim, "Omnia præsumuntur rite esse acta," and for assuming that the celebrant was a Protestant minister.

We consider that Mr. Villiers' Bill to amend the law of settlement now before Parliament will, if it become law, greatly abridge litigation, by shortening the period necessary to acquire a settlement from five years, as fixed by Sir Robert Peel's Act, to three years. The Bill may contradict Malthusian doctrines, but it tends to remove much misery from "the short and simple annals of the poor." We shall not repine at the extinguishment of the glories of Bott and Caldecott, nor at the obsoleteness of the rhyme regarding the settlement of a *feme sole*, who married a man who had none.

> "Quoth Sir John Pratt, her settlement
> Suspended doth remain,
> Living the husband—but him dead,
> It doth revive again."

We may add that the late Lord Chancellor's Bill to repeal the Irish Act, 19 Geo. 2, c. 13, s. 1, has not yet become law.

The annual dinner of the Law Amendment Society is to take place on next Saturday, the 13th instant, at the Ship Tavern, Greenwich. Lord Brougham has promised to preside on the occasion.

WILL FRAUDS—DISTRICT REGISTRIES.

The memorial of the Manchester Law Society to Sir Cresswell Cresswell, which will be found in another part of these columns, refers to a case which recently occurred in the Manchester district, for the purpose of showing how important to the public interest it is to have the intervention of a solicitor in every application for probate of a will. In the case alluded to, probate of a forged will had been obtained in the Manchester District Registry, upon the application of the person propounding the will, without the intervention of any professional agent. The recent General Order not only enables any party to apply in person for probate or administration, but compels the district registrar to act as the solicitor and agent of the person so applying. No guarantee of any kind as to his character or *bonâ fides* is necessary, nor has a district registrar a right to require a party applying in person to obtain any introduction, or produce any evidence of respectability. It requires little acquaintance with the business of the Probate Court to understand that such an arrangement will necessarily open a wide door to the grossest fraud and imposition. It is, in truth, an invitation to a class of schemers and plotters, who will not be slow to avail themselves of it; and if the obnoxious General Order remains in force, we shall soon see many cases like the one referred to in the Manchester memorial. Indeed, there have been before the Judge Ordinary himself, numerous cases in which he must have seen, as the public has, the necessity of securing for the Court and the public, the responsible agency, in every will case, of a solicitor. To go no further back than the morning journals of yesterday, we find in them a useful illustration of this point; and as some of our readers may not have read the report, we shall shortly state the facts which were disclosed upon the evidence of the plaintiff, who was the only witness examined.

The plaintiff was a Doctor Davis Griffiths Jones, who stated that he lived in Woburn-place, and that he was an M.D. of Marischal College, Aberdeen. According to his own account, some years ago he made

the acquaintance of the alleged testatrix, and she then resided with him for a few days at a house near Windsor, which he occupied at the time. At the expiration of his visit a misunderstanding arose as to the terms upon which Mrs. Bellis, the alleged testatrix, resided with the doctor, he insisting that she had come as a patient, and she, that she was merely a guest. After this quarrel, no further communication seems to have taken place between her and her would-be medical adviser, until the 11th of last February, two days before the date of the alleged will, and three before the day of her death. The Doctor, however, asked a jury to believe that, at the earnest solicitation of Mrs. Bellis, he had rescued her from a boarding-house in Fitzroy-square, and given her the tranquil and pleasant asylum of his own professional mansion, the comfortable ministrations of the wife of his bosom, and the anxious services of himself, because he was a "Christian and a friend, and took compassion on her." At all events, according to his own account, whatever his motive was, the poor lady felt herself bound, a few hours before her death, to make her will in favour of her generous benefactor, and this was the instrument which he propounded, but which, as the deceased was illegitimate, and a childless widow at the time of her death, was disputed by the Queen's Proctor as representative of the Crown. The cross-examination of the plaintiff affords materials for a curious little historiette, which, with the aid of a few suitable etchings from the pencil of Leech, might be made a useful, and certainly an amusing guide for schemers intending to apply in person for probate in district registries. Doctor Jones had practised homœopathy and also hydropathy for nine or ten years, and was the owner of a medicine with the unpronounceable name of "Axtramankaz," a farinaceous substance, or substitute for cod-liver oil, but made of "cereals, rice, and other compounds." So far, however, and even still further, namely, as to all that related to the purchase of this inestimable compound from some mythical Dutchman, and the "establishment" for its sale in New Oxford-street, there was hardly enough in the evidence in chief or cross-examination of the plaintiff to justify a jury in giving a verdict against him; but yet before the Queen's Advocate had done with him, it became so plain that his oath was no guarantee for the truth of anything that he said, that even his own counsel stated that he would not "insult the jury" by asking them to believe such a man. We have said that he claimed to be a doctor of Marischal College, Aberdeen, and so in fact he was. But after a particular account of how he went to Aberdeen, and where he slept there, and of his visit to the college about his degree, and a deliberate averment of the fact of his examination, he, finally, upon being pressed, admitted that he had never been to Aberdeen at all, but that another person had represented him at the so-called examination. Upon this the jury of course at once intimated that it would be useless to proceed with this examination, as they believed the witness was "quite unworthy of credit." The verdict was thereupon entered for the defendant, and Doctor Jones was condemned in costs, as all honest men will be glad to learn; and we only hope that the procedure in the Probate Court in litigated cases is not so very inexpensive as to prove no terror, but rather an inducement, to such testamentary practitioners as this homœopathist. Our present purpose in adverting to this case, however, is to adduce it as an illustration of the great public danger which must arise from the fact that all such schemers as this Doctor Jones, throughout the provinces, can insist upon being the clients, and upon employing the active services, of the very persons whom the public has appointed to protect its interests in the district registries. There is very little doubt that if Doctor Jones was able to have selected Manchester or Birmingham as the scene of his doings, the British public would never have been enlightened as it now is about the manner in which he acquired his Scotch degree, and that he would have been rewarded according to his own estimate of the kind and Christian services which he so unselfishly rendered to this deceased lady. At all events he would have the satisfaction of knowing that instead of being obliged to prove his case before an uninterested judge, and an independent tribunal, the only official whom he would have to satisfy as to the character of his evidence would be the registrar, who was engaged as his private solicitor in preparing it, and whose salary partly consisted of a payment which compelled the registrar so to act. We commend this case to the notice of our country readers, although we have no doubt there are few of them who could not from their own experience add to our stock of information on this interesting question.

THE SATURDAY HALF-HOLIDAY.

A recent announcement in the *Times* that the Chancery judges had at length made some concession to the general feeling in favour of the Saturday half-holiday was read with very general approval by the profession and the British public. It was announced that in one of the courts the eminent judge presiding there had stated that he "would not commence any fresh cause after 2.30 on a Saturday afternoon." The concession was not much, to be sure. To make it of any practical avail there must have been on each successive Saturday something like a conspiracy between the leaders of the court. Rising at a particular time and not beginning any fresh matter after that period are, as those who are doomed to sit in court day by day know, widely different things. Unless, therefore, the Bar and the solicitors combined together and, so to speak, "struck work" at 2·30, refusing any judicial invitations to bring on a short matter, or commence a reply, &c., at 2.25 or thereabouts, the half-hour would seldom have been enjoyed by the profession. However, we were thankful for the instalment, small as it was, and in the hope that another half-hour if not hour might be conceded during this hot summer weather, we would not quarrel with the scant measure of the concession. Lord Westbury, on the day of taking his seat as Lord Chancellor, is reported to have stated that to suit what he considered to be the wish of the profession the court would not sit after 2.30 on Saturdays. This looked like an official confirmation of what had been intimated in another branch of the court on the preceding Saturday. The Lord Chancellor announced his act of grace without any qualification or reservation. There it was on record by the supreme head of the law that after 2.30 the court (and here, by the way, we claim the benefit of the usual interpretation clause, that "every word importing the singular number only" shall be extended to mean the plural also) would not sit; and it was only natural to expect that the qualification as to not commencing any fresh cause would be removed, and that the half-hour, *sans phrase*, would be conceded in every branch of the court. But mark the result! On Monday last, we learn from the *Times* reporter that in announcing even that qualified concession in the particular court to which he is attached, he was "led into a misapprehension," and that the observations were not intended for Saturdays in general, but must be confined to Saturday, the 22nd June, in particular. That court accordingly did not rise on Saturday, June 29, till after three o'clock, without even the short interval for lunch usually conceded to suffering legal stomachs. Whether the Lord Chancellor will allow his announcement to remain a dead letter in all the courts except his own remains to be seen. We sincerely trust that he will not leave thus incomplete the concession with which he has inaugurated his accession to the high office so deservedly earned by him. If the great business houses in the city, the banks, the leading solicitors, the shopkeepers in our principal thoroughfares, have nearly all given their adhesion to

the Saturday half-holiday movement, and with few exceptions closed their counting-houses and offices at two, dismissing their clerks, &c., to an afternoon of honest, healthy recreation, why should the Court of Chancery stubbornly refuse the same boon to its overworked, and in many cases underpaid attendants? Is there such a pressure of business that the public would suffer by being mulcted of an hour of judicial time during the week? The cause-lists in most branches of the court distinctly show the contrary. We note, too, that the Master of the Rolls has been sitting for several days at the Privy Council, which certainly indicates "something rotten in the state" of his paper. Besides this, the courts, at a time when the pressure of business is very slight, sit habitually to a much later hour than formerly, when suitors had ample reason to complain of delay. The late Vice-Chancellor of England was accustomed to rise punctually at 3. With Vice-Chancellor Wood to rise before 4 is exceptional. Even in the Divorce Court, where, from the want of sufficient judicial power the arrears of business have increased and are still increasing to an extent altogether unexpected by the Legislature, Sir Cresswell Cresswell has acceded to the suggestion that the Court shall rise as nearly as possible at half-past two on Saturdays. More than this, that grim Rhadamanthine tribunal, the Court of Insolvent Debtors, pauses, we understand, from its joyless labours at 2. In those dreariest realms, where the Commissioner *castigatque auditque dolos*, he then adjourns till Monday morning, and takes his half-holiday like a gentleman of the upper air. The Chancery Code (*see* Order xxxvii., Rule 2), recognises this half-holiday and enacts that service of all writs, &c., and other proceedings shall be made on Saturday "before two o'clock in the afternoon." Why, then, should the Chancery Courts alone refuse to concede to their practitioners that privilege which is now enjoyed by almost every other class of working-men?

If we must speak out, we do not consider even a close of work at half-past two on a Saturday any such very ample boon. Surely there is something of mockery in heralding forth a concession of a little more than one out of six hours as a half-holiday. What would the schoolboys say to such an interpretation of the good old term? During the present sittings, at all events, the Courts might well reserve Saturdays for unopposed and short matters, &c., which can be disposed of without much argument, and rise punctually at 1. In the winter months, the same considerations do not apply with equal force. "Marches out" are few and far between, instead of being, as now, the rule on a Saturday. Country excursions then present no special attractions; besides this, the business of the Courts, after the long vacation, is generally of a more important character, and the hour or two at the end of the week which we now claim, might well be restored to the judicial mind from November to March. It may be that the other equity judges do not feel themselves at liberty to concede an hour of the public time upon the mere intimation in a newspaper of the Chancellor's view, unsupported by the authority of a general order. But whatever official intimation, either public or private, may be requisite, we trust that Lord Westbury will not allow his concession to be confined to the court in which he presides.

ON THE LAW OF TRADE MARKS.

No. V.

(By EDWARD LLOYD, Esq., Barrister-at-law.)

Of the Doctrines of Foreign Tribunals.

The general principles on which in our own country the rights of the trader, whether a British subject or an alien friend, in the use of a trade mark have been protected, are recognised in the courts of justice both of America and of France. In America, as might be expected, frequent reference has been made, in the arguments and the decisions in cases of this class, to the doctrines of our courts on the subject; the exponents of the law, however, have, as it seems to me, derived considerable advantage in the precision with which they are enabled to lay down a rule by which their courts will be guided in granting or refusing relief from not being hampered by previous decisions. We see in our own courts a constant endeavour to limit the equitable jurisdiction to the principles laid down by Lord Hardwicke in *Blanchard* v. *Hill;* and though the good sense of later judges has at length firmly established the jurisdiction on a wider basis, I think no one who reads their decisions will fail to be struck by a species of timidity in their expressions, by an anxiety to guard against anything like a recognition of property in a trade-mark, although in fact some of these very decisions can only be supported by reference to the general right of a court of equity to interfere for the protection of property against injury. This general principle has, however, been fully recognised in the American courts. Mr. Justice Story (Comm. Eq. Jur. s. 947, *seqq.*,) places injunctions granted in restraint of an alleged violation of a trade-mark together with cases of piracy of dramatic works, publication from notes of an oral lecture without the author's permission, publication of private letters, or engravings, under the general head of protection to property. In *Coffeen* v. *Brunton*, 5 McLean 256, the principles by which the American courts will be guided are stated in the following words, "To entitle a complainant to protection against a false representation it is not essential that the article should be inferior in quality, or that the individual should fraudulently represent it so as to impose upon the public; but if by representation it be so assimilated as to be taken in the market for an established manufacture or compound of another, the injured party is entitled to an injunction." In the case of *Partridge* v. *Menk*, 2 Sand. Ch. 622, the right of a trader in the use of his mark is regarded as a species of goodwill which he acquires in his business (which is undoubtedly a proprietary right); and it is said that by the appropriation to himself of a particular label, sign, or mark, indicating that the article is made or sold by him, or by his authority, or that he carries on business at a particular place, he is entitled to protection against one who attempts to pirate upon the goodwill of his friends or customers, or the patrons of his trade or business, by using such label, sign, or trade-mark without his authority.

I have before (*sup.* p. 487) referred to the case of *Howard* v. *Henriquez*, which certainly carries the jurisdiction to its limit; for it appears that in that case the proprietor of an hotel called the "Irving House," or "Irving Hotel," obtained an injunction to restrain the defendant from using the same title for his place of business, although the name did not appear upon any part of the building of the plaintiff. The case of *Colladay* v. *Baird*, decided in the Court of Common Pleas of Philadelphia, and recently reported in this Journal (*sup.* p. 543), enters very fully into the reported cases, as well English as American, on this subject; and while it recognizes the principle that a manufacturer, though having no copyright in a label, may adopt a trade-mark which so far becomes his own property as to entitle him to the protection of the courts of law and equity, yet admits the possibility of cases arising in which one trader may use a name adopted by another as a trade-mark, and yet not interfere with his legal or equitable rights. No one, indeed, will be disposed to deny this, or to assert that a manufacturer can, by the use of a name, obtain an absolute right in it as a name merely; "it is only when a name is printed in a particular manner upon a particular label, and thus becomes identified with a particular style of goods, or where a name is used by a defendant in connection with his place of business (and not his manufactured goods),

under such circumstances as to deceive the public, and to rob another of his individuality, and thus destroy his goods and injure his profits, that it becomes a trade-mark, or in the nature of a trade-mark, and as such entitles its possessor or proprietor to the protection of the courts of justice." These words (quoted from the report of the lastly-mentioned case), agree very closely with the definition of the right of property in a trade-mark, which I have ventured to lay down, and do, in fact, recognize its qualities as property of a peculiar sort. There are other cases in the American reports to which I will only refer (*Coats* v. *Holbrook*, 2 Sand. Ch. 599; *Clench* v. *Maddick*, 16 Leg. Int. 236; *Dayton* v. *Wilkes*, ib. 292; *Coats* v. *Piatte*, 19 Leg. Int. 213; *Davis* v. *Kendall*, 11 Am. L. Reg. 680). The case of *Taylor* v. *Carpenter* (2 Sand. 603), is valuable inasmuch as it shows that the courts of the United States will grant an injunction to a native of this country against one of their own subjects, to restrain an infringement of the right to a trade-mark, although it was, in that case, argued on the alleged authority of *Delondre* v. *Shaw*, that the English courts would not grant relief to a foreigner for such a violation of his rights, and that the trade-marks of Englishmen in the United States were, therefore, not entitled to protection. In the judgment in this case, however, it was admitted that *Delondre* v. *Shaw* lays down no such rule, but rather that the English courts will always restrain the fraudulent sale of a spurious article; the greatest abhorrence is expressed of the doctrine that fraud by a citizen should be sanctioned because it was practised on a foreigner in the prosecution of a legitimate business within the American jurisdiction, or that a suitor should be denied the ordinary remedy to protect him in the enjoyment of his rights because he is a foreigner; and it is truly said that every dictate of enlightened wisdom requires that a foreigner, especially in a commercial country, shall be entitled to the same protection of his rights as a citizen.

The French law, while it differs in some minor points from our own, fully recognises the existence of property in a name or mark; and a right of action for damages for an injury done to this species of property by a copying or colourable imitation of the name or mark. The general principles of the law are to be found in the "Dict. de Droit Commercial Art. Nom.," by M. M. Gouget and Merger, from which the following remarks are translated and adapted.

A trader acquires a property in the name which he affixes to articles of his manufacture, whether it be his own name, or a fanciful designation to recommend them to the public; so also, in the case of wrappers or labels, these distinctive marks become the property of the trader, and give him a right of action against any rival in trade who may pirate them, for the purpose of misleading purchasers, and also against any person who may aid or abet such piracy. On these principles, it has been decided that a printer has no right to hand over the labels of a house of business, except on the demand of the house itself, or of some person duly authorised by it; and that he is liable for damages for handing such labels over to unauthorised persons, and that it makes no difference that they are to be used in another country. [This doctrine is certainly opposed to what has been laid down in our courts, for Lord Cranworth in *Farina* v. *Silverlock*, 6 De G. M. & G. 214, recognises the right of a printer to print and sell generally such labels, and that there may be a legitimate trade in them with persons other than the original proprietor.]

So also with painted signs, or escutcheons, and with names and marks on carriages. In short, with any external mark which a trader may use to distinguish his goods, the use of which by other parties gives a fair ground for presuming an intention on their part to appropriate to themselves his advantage in the market.

We must not, however, forget that the French law draws a distinction between such names and signs as I have enumerated above, and those which are more specially termed *marques de fabriques*, or trade marks. All the remarks which I shall make here allude to the former class of marks only, the latter being subject to certain provisions for deposit and registration, in virtue of which only they are legally cognisable. In fact, they correspond more nearly, as far as the principles extend on which the right to use them is founded, with books, &c., and inventions, which are, in our country, the subject of copyright or of a patent.

The French law does not look upon the names and signs which are comprised under the former of these two heads as so important as the *marques de fabriques*, or trade marks. It protects them, however, against any attempted violation, direct or indirect, on the ground of the right to protection which the credit of every trader enjoys. This implies that there must be a possibility of damage, as we have seen in our own law. The imitation, therefore, must be such as to be likely to deceive.

In France the action is brought, as in our own country, by the proprietor of the trade mark; and in considering how this proprietary right has arisen, the very important question is involved, whether or no it can be possessed by a foreigner. I have not been able to find out that this point is definitely settled, although the balance of authority certainly leads me to conclude the right of a foreigner would, as in our own courts and in America, be protected in France. On the one hand, it is said that this right to protection is grounded either on the general right, in which case, according to the 11th & 13th articles of the Civil Code, an alien in France only enjoys those civil rights which are reciprocally given to French subjects by treaty with the nation of the alien; so that, for an English subject, there would be no such right, although it may be questioned whether, under the provisions of the new commercial treaty, even on this ground an English subject might not succeed in maintaining such a right; or it depends on the special law by which an action for damages is given for the fraudulent use of the name of a manufacturer to his injury, and that this law does not expressly include aliens; so limiting the jurisdiction in a manner exactly analogous to that which was followed in the case of *Jeffreys* v. *Boosey*. So far, however, as the decisions of the Royal Courts of Paris and Rouen extend as an authority, the jurisdiction is placed upon a broader and sounder basis. Admitting that aliens are to be excluded from those civil rights which are the mere creations of French law, they are still entitled to enjoy such as arise out of natural law, or the law of nations, the existence of which the French law recognises, and the exercise of which it regulates. The principle that every injury demands a reparation from the person committing it, is certainly one of these natural rights, and is sanctioned, though by no means created, by French law. This maxim of natural equity is not limited in application, it governs the rights of aliens as well as of native-born subjects; the only case in which it may cease to become applicable is where a special law regulates the enjoyment of certain rights, in virtue of which alone, over-riding the natural law, those rights exist. The property of a trader in his name is universally recognised, though this may be and is regulated in France by certain special laws (the law of July 28, 1824, and the law of the 22nd Germinal Ann. 11.) These are to be considered only as acting in aid of and not as over-riding the natural law. In short it is stated, that an alien bringing into France a trade or any manufactured article, ought to be protected equally with a French subject; that the rules of equity are universal, and that therefore the French tribunals are bound not to allow the consumer to be taken in by fraudulent speculations; and that these general principles cannot be controlled in their application by any general laws.

We see, therefore, that on the whole the same spirit

has inspired the decisions of both the American and the French courts with that which dictated the judgment in the cases of the Collins Company (*vide sup.* p. 569.) There can be no doubt that the principle laid down there is a just one—that for a personal wrong, and the piracy of a trade-mark is such,—the alien as well as the native subject is entitled to a remedy in the courts of the country where the wrong is committed.

CHANCERY PRACTICE.—ENFORCING DECREES AND ORDERS.

We have already noticed the provisions of the practice introduced in August, 1841, with reference to the enforcement of decrees and orders, and suggested a more extended application of the principle involved in such provisions. We now pursue the subject.

The full benefit of the provisions referred to has not yet been applied to cases where the decree or order is to be enforced against a corporation. Previously to August, 1841, a writ of execution, attachment, attachment with proclamation, commission of rebellion, and serjeant-at-arms, were necessary preliminary steps in process of contempt before sequestration could, in ordinary cases, be obtained. Since that time, and in such cases, service of the order or decree has taken the place of the writ of execution; and sequestration has been obtainable upon the sheriff's return to the first attachment. But the practice introduced in 1841 has been applied to corporations only to the extent of substituting service of the order in lieu of the writ of execution. In all other respects the practice in such cases has continued as before. For instance, to obtain sequestration for breach of an order or decree against a corporation, the following preliminary steps are necessary:—A copy of the order must be served personally upon the secretary or other person acting officially for the corporation. Then a *distringas* is issued. If the sheriff returns "*nulla bona*," an *alias distringas* is issued. If the sheriff again returns "*nulla bona*," a *pluries distringas* is issued. And if the sheriff still returns "*nulla bona*," upon such third return of "*nulla bona*," an order *nisi* for sequestration may be obtained. But if the sheriff returns "issues forty shillings" to the first or either of the subsequently issued writs of *distringas*, upon such return an order *nisi* for sequestration may be obtained. See *Harvey* v. *The East India Co.*, 2 Vernon, 395; and *Lowther* v, *The Mayor, &c., of Colchester*, 3 Merivale, 543.

We are unable to trace the origin of the practice. Very little information respecting it is to be gleaned from existing works upon the subject—and this observation applies equally to the standard works on sheriff law as to other works on the general practice of the Court. We have consulted many volumes of such works—some very old—and in every instance we find the practice stated just as concisely as it is stated in the modern books of practice. Its origin, the reasons for its adoption, or detailed information as to how such writs should be executed, are points barely touched upon. Hence a case which came under our notice very recently did not at all surprise us. In executing a *distringas* founded on a contempt, the sheriff's officer dealt with it as he would have dealt with a *fi. fa* He sought to levy the whole amount in respect of which the writ issued, and remained in possession six or seven days, and there being even then no goods upon which a distraint could be made, he returned the writ "*nulla bona*,"—a return which he might and should have made immediately upon his entry. And, in the same case, the like proceeding was repeated with an *alias distringas*, thus delaying justice to the parties, and involving them in unnecessary expense. The number of steps in the process seems to be in imitation of the process formerly sued forth against ordinary parties, and the origin of the former practice, as against ordinary parties, is, perhaps, traceable to the source indicated by Gilbert in his "Forum Romanum." In that work he shows that the usual steps in process of contempt as applied by the Court of Chancery were in imitation of the old canon and civil law. On page 32 he says, "By the canon law, the defendant was to be thrice cited, or else *per unum peremptorium*, and then, if he did not appear, he was pronounced *contumax*." In page 33 he speaks of the citation in civil cases of a defaulting defendant, and, in page 34, says, "If this citation be from the prince, then the very first is peremptory, and if the person does not appear, he is *contumax*. The *subpœna* is with us the citation, and if the defendant does not duly appear upon it, he is *contumax* of course, because this is a citation from the prince." He then mentions the subsequent steps necessary to be taken to enforce obedience, viz., attachment, attachment with proclamation, serjeant-at-arms, and sequestration — adding, in page 35, "so that they had three real citations before they came to sequestration." But so very little information being procurable respecting the writ of *distringas* founded on a contempt, it is difficult to say how far any modification of the existing practice might affect the principle upon which such process is founded, and, therefore, in suggesting any such modification, we must be chiefly guided by an endeavour to assimilate the practice in such cases to the improved general practice, applicable to the enforcement of decrees and orders.

It would very much simplify the practice if the course of procedure against corporations were the same as against persons having privilege of peerage or of Parliament. In some respects they stand in a like position. Neither can be held to obedience by personal arrest. Formerly, in cases of contempt against peers, a writ of attachment was actually sealed and entered (though not executed) to ground a sequestration upon:—See Gilbert's "Forum Romanum," page 67. The attachment has, however, long since been dispensed with in such cases, and an order *nisi* for a sequestration may now be obtained at once upon proof of service of the decree—and we think that like facilities might be afforded as against corporations. Under Rule 4 of Order 30 of the Consolidated General Orders, p. 94, service of the decree or order binds the party to obedience, and is a sufficient foundation for process of contempt —and, thus far, the provisions of such rule have been applied to corporations in accordance with Article 3 of Rule 10 of the Preliminary Order, p. 5. Do the writs of *distringas* answer any other purpose than that of holding the party to obedience? The *distringas* on a contempt is not a writ remedial for actual recovery of money due. The sheriff is not bound to levy the whole amount in respect of which the writ issues. The levy under the first *distringas*, of "issues 40*s*." only is regular, see *Lowther* v. *The Mayor &c. of Colchester*, 3 Merivale, 543. The amount levied is merely in the nature of a fine or amerciament, and to distress the parties in their possession until obedience rendered. And it appears from Tidd's Practice, 8th edition, (1840) pp. 34, 36, that in the writ of *distringas* issued to compel appearance the amount of the issues (limited to 40*s*.) was specified in the writ, shewing, evidently, that the amount levied was not to satisfy the party, but only to hold the defaulting party to obedience—and the writ of *distringas* founded on a contempt of the Court of Chancery, and issued against a corporation likewise merely holds the parties to obedience and distresses them in their possession in order to enforce that obedience. The *alias distringas* does no more. The *pluries distringas* does no more. In fact, when the three writs have been issued and executed, nothing more is done than is effected by service of the decree, which service, under Rule 4 of Order 30, itself binds the party to obedience. But, if an order *nisi* for sequestration may not be obtained upon proof of service of the decree, and thus the writs of *distringas* be dispensed with altogether, we think that the *alias* and *pluries* writs might be dispensed with, and that such a modification of the practice would be in harmony with the modern practice as applied to ordinary cases. Under Rule 3 of

Order 29 of the Consolidated General Orders, p. 89, applicable to ordinary cases, sequestration may be obtained upon the sheriff's return to the first attachment, and even upon the first return *non est inventus*. If sequestration absolute may, in ordinary cases, be obtained upon the first return *non est inventus* to an attachment, why may not an order *nisi* for sequestration against a corporation be obtained upon the first return "*nulla bona*" to a *distringas*? This would harmonize the practice. And we conceive that such a modification would be in accordance with the spirit and intent of Rule 3 of Order 29, and, if in accordance, its application would be authorised by article 3 of Rule 10 of the Preliminary Order, which article expressly provides that the word "person" or "party" shall include a body politic or corporate. It is considered that although a party may issue and execute the three writs of *distringas* against a corporation, he can, nevertheless, recover 13*s*. 8*d*. only as the "fixed" costs of contempt. If such opinion be correct, it supplies an additional reason for the adoption of our suggestion—for it were certainly inconsistent to require a party to issue and execute three writs and yet allow to him the costs of one only.

Of course, if the modification of the practice suggested be at any time made, it will be applicable alike to all cases of contempt against corporate bodies.

There is another writ which deserves notice. We allude to the writ of assistance—a writ issued to enforce the delivery of possession of land, &c. In Lord Bacon's time the issuing of this writ was preceded by writ of execution, then the ordinary process of contempt to commission of rebellion, and the serjeant-at-arms and injunction. (See "Beame's Orders," p. 6). Since August, 1841, all these preliminaries have been dispensed with—but delay and expense still attend the obtainment of the writ. It is still requisite to apply for an order for the writ. The application is by motion in court, *ex parte*, and is granted as of course, upon proof, by affidavit, of personal service of the order directing delivery of possession. (See Rule 5 Order 29 Consol. Gen. Ord. p. 90). The main part of the order thus granted simply directs that the writ do issue. In all other respects it is a repetition of the previous order. The order for the writ being granted as of course, no further notice is given to the party affected by

and we think that the object might be as effectually accomplished, if words to the following effect were inserted in the order directing delivery of possession, and which is served upon the party, viz. "And in default thereof it is ordered that a writ of assistance directed to the sheriff of ——— do forthwith issue to put the said ——————— into such possession as aforesaid, without further order." The only needful variation in the writ would consist in the omission of the recital of the separate order directing the writ to issue.

We suggest, too, that the copy of the order served should, in these cases, be endorsed with a notice or memorandum showing the liabilities consequent upon disobedience—thus assimilating the practice to the general practice of the Court as applied to other cases.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF QUEEN'S BENCH.—SECOND COURT.

(Sittings at Nisi Prius, at Guildhall, before Mr. Justice HILL and Special Juries.)

July 2.—*Miller* v. *Atherton*.—This was an action brought by the plaintiff, who is an attorney in the City, to recover damages for slanderous words used by the defendant concerning the plaintiff. The defendant merely pleaded "Not guilty."

According to the plaintiff's case, he was attending at the Bankruptcy Court as a solicitor on behalf of the bankrupt and the creditors. The defendant attended to prove a debt under the bankruptcy. The plaintiff required to see the securities he held, when the defendant called the plaintiff a pettifogging lawyer, a dirty sweep, a rogue, a —— rascal, and added that he should be be able to prove him such. The plaintiff told the defendant if he had used that language in any other place he would have pulled his nose. On the following day the plaintiff wrote to the defendant demanding an apology, but, receiving no answer, the present action was brought with a view of vindicating the plaintiff's character, and it was stated that if the defendant would then make a retractation the plaintiff would be satisfied. No apology, however, being offered, the case proceeded. The words, as alleged, were proved to have been used in the Bankruptcy Court when it was crowded with people.

On behalf of the defendant, it was contended that the words were mere vulgar abuse, used by an angry and passionate man.

The jury retired for a short time, and then returned a verdict for the plaintiff—Damages, 40*s*.

COURT OF QUEEN'S BENCH.

(Sittings at Nisi Prius, at Guildhall, before Mr. Justice HILL and a Special Jury.)

July 3.—*The Queen* v. *Blundell*.—This was an indictment, charging the defendant with having threatened to publish certain libels against James Bell, with intent to extort money from James Bell and others. It further charged the defendant with having published certain libels, knowing the charges therein contained to be false. The defendant pleaded "Not guilty" generally, and some of the charges he justified on the ground of their being true.

It appeared from the statement of the plaintiff's counsel that the prosecutor, James Bell, was a solicitor, residing at Surbiton, but also carrying on business in Leadenhall-street; he was also clerk to the magistrates of the Kingston division. The defendant, Mr. Blundell, was also an attorney. The prosecution was instituted in consequence of a series of libels published during a number of years, and which had gone to such an extent that Mr. Bell found it absolutely necessary to adopt this proceeding in order to vindicate his character, and prevent the defendant from continuing to annoy him. In 1850 Mr. Bell was the London agent to an attorney in the country, who had brought an action against Mr. Blundell at the instance of a Mr. Browne. The case was tried at Gloucester, and a verdict for the plaintiff, with £50 damages, was given. After the trial Mr. Blundell had written a letter to the attorney in the cause, offering peace. Mr. Browne afterwards brought an action against Mr. Blundell, when the jury gave £300 damages. After this action Mr. Blundell frequently called upon Mr. Bell with a view of obtaining time for the payment of the damages and costs. He was ultimately taken in execution. This gave rise to some ill-feeling on the part of Mr. Blundell, and in July, 1855, he commenced a series of libels against Mr. Bell. In the first letter he called upon him to pay him £1,500 of which he alleged he had been despoiled, and also to make an apology. If he received these within 10 days he would expose him and his confederates no further. Mr. Blundell then wrote a circular to the county court judges, the leaders on the Oxford Circuit, and others. In this circular he particularly mentioned the late Serjeant M. R. Clark and Mr. John Gray. Other libels followed, and on the 7th of November, 1859, Mr. Blundell wrote a letter to the Kingston bench of magistrates in which he said of Mr. Bell that he knew him to be a plausible, well-dressed, respectably-connected, and decently-attired, scoundrel, capable of any roguery, and he would not credit his testimony uncorroborated. Mr. Blundell also wrote to the Secretary of State complaining of the conduct of the Kingston magistrates. This conduct was inquired into, and the explanation was perfectly satisfactory. Mr. Blundell had been asked to apologize, but this he had refused to do, and said he would facilitate any proceeding that might be adopted against him. He also said that he had for a short time suspended practice in order that he might have time to castigate Mr. Bell and his confederates, and he added that he should be at Surbiton for a few days, and should not be inactive. To bring an action against such a man would be useless, and therefore the present proceeding by indictment was instituted.

The learned JUDGE having summed up,

The jury returned a verdict of "guilty" of sending a threatening letter, but not with a view of extorting money, and "guilty" on the other counts.

The CROWN prayed judgment.

The JUDGE said, in the present state of the record, there having been some demurrers, he could not pass judgment. The defendant must be brought up for judgment next term.

Sir William Atherton has been appointed Attorney-General in succession to the present Lord Chancellor.

Mr. Roundell Palmer, Q.C., who has been appointed to the office of Solicitor-General, will become a candidate for the representation of Richmond, Yorkshire, which is vacant by the resignation of Mr. Henry Rich. A writ for the election was ordered on the 4th inst., and by Tuesday or Wednesday next, the new Solicitor-General will in all probability have taken his seat for the borough.

Mr. Joseph George Wilson, of Alfreton, Derbyshire, has been appointed a commissioner to administer oaths in the High Court of Chancery in England.

Parliament and Legislation.

HOUSE OF COMMONS.

Tuesday, June 2.

THE BANKRUPTCY BILL.

Mr. HADFIELD asked the noble lord at the head of the Government, whether it was intended to proceed with the Bankruptcy and Insolvency Bill this session, and on what day he would proceed, if such was his intention.

Lord PALMERSTON said that it was the intention of the Government to proceed with this Bill; but that as it involved legal considerations, he would not name a day for bringing it on until the law officers were in the House, which he trusted would be very shortly.

THE COURTS OF JUSTICE BUILDING ACT (MONEY) BILL.

This Bill was read a second time, and ordered to be referred to a select committee, with an instruction to consider the question of site.

Wednesday, July 3.

INDICTABLE OFFENCES (METROPOLITAN DISTRICT) BILL.

Mr. WALPOLE moved the second reading of this Bill, which had come down from the Lords, and the principle of which is contained in the first and second clauses. The first provided that no charge should be preferred against a person by going behind his back to a grand jury in the first instance, when there was an opportunity of going to a trained professional magistrate, who could understand the charge, and see whether it was of such a nature and supported by such proofs as rendered it proper that the person charged should be sent to trial. The second clause enacted that when a charge was investigated by a justice of peace, in open court, it should no longer be necessary to go to the grand jury. The main objection which was urged against the Bill was that it tended to supersede the grand jury system; and in that case, it was asked, what was to be done with a class of offences called political offences, in respect to which the grand jury system had acted as a shield of protection, and as a barrier between the Crown and the subject? His answer to that objection was that the 8th clause of the Bill provided for that class of offences, and if the clause should not be deemed sufficient for the purpose it could be amended in the committee. It was said, and truly said, that the grand jury system had been a great protection to the people of this country against improper accusations, and against the undue exercise of power on the part of persons in authority; if there was anything in the Bill which could supersede that system, he for one would not move the second reading. But what ground was there for such an apprehension, when in fact the grand jury system would, under the present Bill, be as complete in the country as now, and when political cases in the metropolitan district were by the 8th clause excepted from the operation of the present Bill? Fifty years ago, the criminal law commissioners considered this subject, and directed questions to be put to a vast number of persons—judges, magistrates, barristers, recorders, solicitors, and other persons acquainted with the practice of the criminal courts, and there was scarcely an answer given which did not amount to an acknowledgment that in the metropolis the grand jury system was in almost all cases superfluous, and in many cases was very mischievous. [The right hon. gentleman, in support of this statement, quoted the opinions expressed by the late Lord Denman, Sir J. Patteson, and in various presentments by grand juries at the Middlesex Sessions and Central Criminal Court.] In reply to the objection that there were no stipendiary magistrates in the city of London, or in those districts subject to the jurisdiction of the Central Criminal Court, he observed that from all he could learn, the clerks who assisted the mayor and aldermen in the discharge of their magisterial duties in the city were men of so much ability and experience that there would be in their case no greater risk of a miscarriage in the administration of justice under the operation of the Bill than in those instances in which the stipendiary magistrates were the persons presiding. Having made these observations, he begged to move the second reading of the Bill.

Mr. AYRTON contended that it was, at the present late period of the session, impossible to do justice to the important question which the right hon. gentleman had submitted to the notice of the House, and that it would be extremely undesirable to proceed with the Bill at a moment when there was no opportunity of learning with respect to it the opinions of the law officers of the Crown. While admitting that the number of grand juries summoned in the metropolis might be looked upon as a great evil, he could not concur with the right hon. gentleman as to the expediency of asking hon. members to assent to a measure which was calculated entirely to subvert the existing system of administering justice as that which was now proposed. He was also prepared to maintain that however much the right hon. gentleman might endeavour to separate the metropolis from the rest of England, yet the principle which he advocated was in the main applicable to grand juries throughout the country at large. The grand jury system, at all events, afforded a guarantee that no man would be put on his trial for felony unless his case had undergone a preliminary ordeal, and twelve men of repute had declared it to be one which demanded fuller investigation. There was at the present moment no very strong feeling against the continuance of grand juries, and he felt it, under those circumstances, to be his duty to object to the course which the right hon. gentleman was taking.

Sir G. C. LEWIS said he was prepared to give his vote for the second reading of the Bill. He thought that there was sufficient ground for the establishment of a distinction between the metropolis and the country with respect to grand juries, and he saw no reason why the House should not at once agree to the Bill.

Mr. B. JOHNSTONE supported the Bill.

Mr. HUNT would deprecate the passing almost *sub silentio* of a Bill which proposed to disturb an integral part of our criminal jurisprudence. He could not help thinking that the Bill was fraught with the greatest danger to the liberty of the subject and the cause of justice. The grand jury system had come down to us from our forefathers, and he had no fear that it would be parted with lightly as long as the names of Jeffries and Scroggs were remembered by the English people. The hon. gentleman, in the absence of Mr. M'Mahon, concluded by moving as an amendment that the Bill should be read a second time upon that day three months.

Sir M. RIDLEY seconded the amendment.

On the motion of Mr. NEWDEGATE the debate was adjourned.

Thursday, July 4.

THE LAW OF LUNACY.

The HOME SECRETARY having taken his seat while the hon. member for Bristol was addressing the House,

Mr. TITE, pursuant to notice, asked the right hon. gentleman whether it was the intention of the Government to introduce any Bill this session for amending the laws relating to lunatics in England, as recommended by the select committee of last year; and, if not, whether it was their intention to proceed with the Bill of the late Lord Chancellor which had been sent down from the House of Lords, having for its object the amendment of the laws relating to the lunatics under the care of the Court of Chancery.

Sir G. C. LEWIS said he intended to proceed with the Bill which had come down from the House of Lords with reference to Chancery lunatics. The report of the select committee had reference to lunatics generally, particularly to criminal lunatics, and they recommended an alteration and also a consolidation of the existing law. He was afraid that even if he laid on the table a Bill to carry out their suggestions it would be impossible that it could pass this session. The measure which had come down from the House of Lords, and with which he would proceed, was simply confined to Chancery lunatics.

CHANCERY LUNATICS BILL.

On the motion of Sir G. C. LEWIS, this Bill was read a first time, and ordered to be read a second time on Monday next.

COPYRIGHT OF DESIGNS BILL.

This Bill was read a second time.

Recent Decisions.

EQUITY.

RIGHT OF LIEN ON PAPERS WHERE SOLICITOR DISCHARGES CLIENT.

Rawlinson v. *Moss*, V. C. W., 9 W. R. 733.

In the case of *Colegrave* v. *Manley* (1 Turn. & Russ. 400), Lord Eldon held that the sale of his business by a solicitor amounted to a discharge by the solicitor of himself from the client's employ. Where the solicitor thus discharges himself the rule as to the use of papers is quite different from what it is where the solicitor is discharged by the client. The suitor in the former case is entitled, in Lord Eldon's words, "to have his business conducted with as much ease and celerity, and as little expense, as if the connection of solicitor and client had not been dissolved." In another case Lord Eldon intimated a doubt whether a solicitor discharging himself could claim a lien —"an expression which," as Lord Cottenham says, in the case to which we shall next refer, "must be understood as meaning not that the solicitor loses the lien altogether, but that he cannot set it up so as to prevent the client from proceeding in the cause." Acting upon the principle thus laid down, Lord Cottenham, in *Heslop* v. *Metcalfe* (3 My. & Cr. 183), made an order on a solicitor, who withdrew from the conduct of the plaintiff's cause, that he should deliver up to the plaintiff's new solicitor all such papers and documents connected with the cause as, upon inspection, such new solicitor might deem necessary for the hearing, without prejudice to any right of lien for costs, and upon an undertaking to return such papers and documents after the hearing. Lord Cottenham, in his judgment in that case, said, "I think the principle should be, that the solicitor claiming the lien should have every security not inconsistent with the progress of the cause. But it is clear that there will neither be, to use the expression of Lord Eldon, the same ease and celerity, nor as little expense, in the conduct of it, if the new solicitor is merely to have access to the papers, as when they are placed in his hands upon his undertaking to restore them after the immediate purposes of the production have been served." It should be observed that, in this case, there was a withdrawal in fact by the solicitor in consequence of the non-payment of his bill. In the case of *Griffiths* v. *Griffiths* (2 Hare 587), a party had employed, as his solicitors in a cause, a firm of two solicitors in partnership, and it was held that the retirement from the business of one of such partners, under an arrangement with the other, operated as a discharge of the client by the solicitors. This being so, it followed that the client was entitled to require that the papers in the cause, necessary for its prosecution, should be delivered up to his new solicitor, upon the usual undertaking for saving the lien of the discharged solicitors. Sir James Wigram's reasoning in this case was, that where a person employs two solicitors who are partners, he stipulates for the activity and services of both. If, then, the withdrawal of one partner from the contract had taken place by arrangement between the two, for purposes of their own, no obligation to one alone could remain upon the party with whom the two made the contract, nor could he be compelled to rely upon the responsibility of one alone. The principle would be the same whether the retiring or the continuing partner happened to be more or less conversant with the particular business. The retirement of one partner had the effect of discharging himself and the other partner as solicitors in the cause; and, therefore, the client was entitled to the benefit of the rule applicable where the relation of solicitor and client is terminated by the act of the solicitor.

In the two cases last referred to the order was made in a pending cause for the conduct of which the papers were required. In the case which has suggested this article, the suit was between solicitors for a dissolution of partnership, and an order was made in it dealing with the papers and documents of clients required in the conduct of conveyancing and other business. It appears, therefore, that the rule laid down in previous cases applies equally, whatever be the kind of business for which the papers are required. It appears, also, that the dissolution of a partnership by decree of the court operates, like a dissolution by mutual consent, as a discharge of the client by the solicitor, and entitles the client to the full benefit of the above-stated rule, as to the convenient use of his papers, notwithstanding the lien of the solicitors.

INVESTMENT OF FUND IN COURT IN EAST INDIA STOCK.

Cockburn v. *Peel*, L. C. & L.J., 9 W. R. 725.

The petitioner in this case was entitled for life to the dividends of a sum of Three per Cent. Annuities, standing in trust in the cause, to which her infant children were entitled in remainder after her decease. The petition prayed that the fund in court might be transferred into East India Stock. The Court refused to make the order. The late Lord Chancellor was desirous, if possible, to lay down some general rule as to such applications, but, on consideration, he thought that "the Court could not safely lay down any more precise rule than that, in the absence of any special circumstances which might make the transfer asked by the tenant for life beneficial to those in remainder, irrespective of pecuniary calculations, the transfer ought not to be permitted, if, on pecuniary calculations, it may be injurious to those in remainder." It had been proposed to guard against the risk of loss in case the East India Stock should be redeemed by establishing a sinking fund; but the Court did not approve of that expedient. There was no suggestion of advantage to the children from the proposed change. Lord Justice Turner said it was in the power of the Court to make the order; but also in the discretion of the Court whether to make it or not.

In the previous case of *The Equitable Assurance Company* v. *Fuller*, 9 W. R. 400, the application was by the settlor, and Vice-Chancellor Wood came very reluctantly to the conclusion that he could not refuse to make the order, as it was the duty of the Court to carry out the General Order of the 1st February, 1861. He said it was not necessary to consider what might be the decision where the application was by a person who had not created the trust. The recent case before the full Court of Appeal was of this character, and we see that the application has been refused. But it does not seem satisfactory to make the difference between the two decisions depend upon this distinction. Indeed, in *Bishop* v. *Bishop*, 9 W. R. 549, Vice-Chancellor Kindersley treated this distinction as unimportant. Probably if the case before Vice-Chancellor Wood had come before the full Court, there would have been a disposition quite as strong as was felt by him to refuse the application, and also less hesitation in assuming the authority to refuse it. It is important to observe that, notwithstanding the late decision, trustees making a change of investment in good faith, will be entitled to the protection of the Court.

REAL PROPERTY AND CONVEYANCING.

PERIOD OF SURVIVORSHIP IN GIFTS BY WILL.

Thompson v. *Thompson*, M. R., 9 W. R. 728.

In the 47th chapter of Mr. Jarman's "Treatise on Wills," the subject of the above case is treated with the author's usual clearness. He says, that one of the questions which arise under gifts to survivors is, whether they mean survivors indefinitely, or survivors at some specific point of time. In seeking for a period to which the words of survivorship could be referred, the obvious rule, where the gift took effect in possession immediately on the testator's decease, was to treat these words as intended to provide against the death of the objects in the lifetime of the testator. Where, however, the gift was not immediate, there being a prior life or other particular interest carved out, so that there was another period to which the words in question could be referred, the point was one of greater difficulty. In these cases, as well as in those of the other class, the courts for a long period uniformly applied the words of survivorship to the death of the testator. The latest case in which this rule was applied to a bequest of personal estate was that of *Brown* v. *Bigg* (7 Ves. 279), where a testator gave the interest of his personal estate to his wife for life, and after her decease he gave the capital to his several nephews and nieces therein named, "to be divided amongst them, and the survivors of them, share and share alike." A niece having died in the lifetime of the widow, her personal representative claimed her share as vested at the decease of the testator, and Sir William Grant so decreed. This and many other cases might seem to have established that a gift to several objects as tenants in common, and the survivors and survivor of them, vested the subject of gift absolutely in the objects living at the death of the testator, the words of survivorship being referable to that period. "The sequel," says Mr. Jarman, "will serve to show that no rule of construction, however sanctioned by repeated adoption, is secure of permanence, unless founded in principle." To the inadequacy of the grounds on which the rule was established, may be ascribed the frequent agitation of the question, and the numerous exceptions engrafted upon the rule, which at length occasioned its total subversion, at least as regards personal estate. Mr. Jarman thinks that a perusal of the later cases will bring the reader to the conclusion that "where there is a gift of personal estate to a person for life, or

any other limited interest, and after the determination of such interest to certain persons *nominatim*, or to a class of persons, as tenants in common, and the survivors of them, these words are construed as intended to carry the subject of gift to the objects who are living at the period of distribution." The first of the cases which suggest this conclusion is that of *Cripps* v. *Wolcott*, 4 Madd. 11, where the testatrix gave and appointed her real and personal estate in trust for her husband for life, and after his decease she directed that her personal estate should be equally divided between her two sons, A. & B., and C., her daughter, and the survivors or survivor of them, share and share alike. A. died in the lifetime of the husband. B. & C., as the survivors at his death, claimed the whole. Sir John Leach considered that "there being no special intent to be found in the will, the terms of survivorship were to be referred to the death of the husband, who took a previous estate for life." Among numerous recent cases to the same effect, it may suffice to refer to that of *Neathway* v. *Reed*, 3 D. M. & G. 18, decided by the full Court of Appeal in 1853. In that case the testatrix gave thus :—"To my sister C. N.'s surviving children, £30 each." She then gave to C. N. thus :—"The interest of my funded property for and during her natural life, and after her decease, such property to be equally divided between her surviving children." It was held that though, on the construction of the word "surviving" in the first clause, the period of distribution was referable to the death of the testatrix, yet that the period of distribution in the last clause was to be referred to the death of C. N., and that those children only who survived C. N. were entitled. The result of all these cases is stated by Mr. Jarman thus : "The rule which reads a gift to survivors simply as applying to objects living at the death of the testator, is confined to those cases in which there is no other period to which survivorship can be referred ; and where such gift is preceded by a life or other prior interest, it takes effect in favour of those who survive the period of distribution, and of those only." It must be remembered, however, that cases not yet overruled forbid the confident application of this rule to devises of real estate.

In the case before us, the testator bequeathed to his wife for her life all his interest in a leasehold house, and at her death he directed the same to be disposed of for the benefit of his surviving children, share and share alike. The testator left seven children, of whom three died in the lifetime of the widow, who was now dead. The Master of the Rolls held that the four children who survived her were entitled to the property. He said that all the modern authorities went in one line, and this case was governed by them.

COMMON LAW.

ADMITTANCE AFTER TERM—23 & 24 VICT. c. 127, s. 12.

Re —— M.A., an Articled Clerk, B. C., 9 W. R. 639.

The Attorneys' and Solicitors' Act of last year contains (s. 12) a provision to the effect that, whenever the period of service under articles expires *in time of vacation*, the articled clerk may pass his examination in the term preceding such vacation; and may be admitted, enrolled, and sworn in, at any time in or after such vacation, upon proving, by affidavit or otherwise, that his period of clerkship has expired.

The utility of this enactment is shown by the present case, in which a question arose whether certain articles expired on the last day of term, or on the day which immediately followed the last day of term. The service was for the period of three years from the date of the articles; and the Court held that in computing the time, the day of their date must be included, which made the articles not to expire until the 9th of May, Easter Term in the present year having ended on the 8th of the month. Under these circumstances, the Court authorized the admission to be made in the vacation under the above provision, though it appears that this permission was not in fact acted on.

HUSBAND AND WIFE—ORDER OF PROTECTION NOT RETROSPECTIVE IN ITS EFFECT.

The Midland Railway Co., Appellants, v. *Pye, Respondent*, C. P., 9 W. R. 658.

This case raises and disposes of the question whether the 21st clause in the 20 & 21 Vict. c. 85 (the statute establishing the new Divorce Court), was intended to have a retrospective effect. This provision enables a wife who has been deserted by her husband to obtain an "order of protection" with regard to money or property thereafter acquired by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or persons claiming under him; and the clause declares that during the continuance of such order the wife shall "be and be deemed to have been during such desertion in the like position in all respects with regard to property, and contracts, and suing and being sued," as if she had obtained a decree of judicial separation. In the present case such an order was obtained by a married woman after she had commenced proceedings in her own name upon a cause of action accruing previously. These proceedings — her husband not being joined — she could not maintain, unless she was helped by the order of protection ; but all the judges of the Common Pleas held that it could not have such auxiliary effect. It would, in the words of Chief Justice Erle, be giving "a monstrous effect" to the clause to construe it as making valid an action begun without the legal right to maintain it. It may be observed that Mr. Justice Byles (while concurring in the general judgment of the Court) stated that he was unable to reconcile the wording of the 21st section of which the effect is above given, with that of the 25th section, which says that in every case of a judicial separation the wife shall be considered as a *feme sole* with respect to after acquired, or devolving property *from the date of the sentence*, and during the continuance of the separation, and (sect. 26) shall be considered as a *feme sole* for certain purposes, and amongst others for suing and being sued.

EXEMPTION FROM TOLL—3 GEO. 4, c. 126, s. 32; 4 & 5 VICT. c. 33, s. 1.

Horwood v. *Powell*, B. C., 9 W. R. 659.

This case discloses a singular attempt at defeating a just claim by a piece of special pleading which was quietly submitted to by the magistrates, but was very properly set aside by Mr. Justice Wightman on appeal. The Turnpike Acts (3 Geo. 4, c. 126, s. 32, and 4 & 5 Vict. c. 33, s. 1) contain an exemption from payment of toll in respect of any horse, &c., which shall only cross any turnpike road, or shall not pass above one hundred yards thereon. In the present case a person when he *came* to the turnpike gate had only gone on the road a very few yards, and claimed to be exempted from the payment of toll thereat under the above proviso, contending that for any thing the toll-keeper could know he was not going on the other side of the gate a sufficient distance to make up the number of one hundred yards. This defence the magistrates considered a valid one, and dismissed an information which had been preferred for refusing the toll—although it appeared at the hearing that in point of fact the person informed against had, after forcing open the toll-gate, proceeded along the turnpike road several hundred yards. Mr. Justice Wightman held that as the traveller was *primâ facie* liable to pay toll, it was for him to make out to the satisfaction of the toll-keeper that he came within the exception ; and that the latter was entitled to demand and take the toll, at the peril of having to render it back again if he found that the payer left the road within the proscribed distance.

It may be convenient here to observe that there have in addition to the present case been recently two decisions upon the proper construction of 3 Geo. 4, c. 126, s. 32. In one of these (*Gerrard* v. *Parker*, 7 Ell. & Bl. 498) it was held that the exemption from toll therein given applies to the case of a travelling more than one hundred yards in the aggregate over two turnpike roads in the same trust, so that one hundred yards on the same road be not passed over. In the other, *Veitch* v. *Trustees of Exeter Roads*, (8 Ell. & Bl. 986) it seems to be the opinion of the Court that the exemption may be claimed if the turnpike road be used at different times on each occasion to an extent less than one hundred yards, but being more than that distance when taken altogether—provided always there be not under the special circumstances of the case, an intent manifest to "evade the payment of toll" within the meaning of 3 Geo. 4, c. 126, s. 41.

HOUSE AGENT—LIABILITY OF, FOR NEGLIGENCE.

Heys v. *Tindall*, Q. B., 9 W. R. 665.

This case will operate as a useful check upon house agents, in whom necessarily considerable confidence is reposed by the owners of that species of property; and it is (so far as we are aware) one *primæ impressionis*. It appears to be an authority for the proposition that a house agent is obliged to use reasonable precautions with regard to the solvency of a person whom he procures his principal to take as tenant, and in respect of whom he has charged a commission. In the present case the person introduced by the agent was, to his knowledge, in insolvent circumstances, and the jury found—and the finding

was supported by the ruling of the judge, and afterwards by the Court—that such conduct showed negligence which was sufficient foundation for the action.

Although, as above observed, we are not aware of an action having before been brought under the above circumstances, it is one which is altogether consistent with the course of the decisions upon the general law of principal and agent. These show that it is the latter's duty, in the absence of specific instructions, to pursue the accustomed course of that business in which he is employed, and it is clear that it is not the business of a house agent to let to an insolvent tenant. Again, it has been laid down that an agent is chargeable with all losses incurred by his own negligence, and this even, in some cases, where at first sight such a doctrine might seem to savour of hardship; as where he has been induced to part with his principal's property by the production of a forged authority (*Forster* v. *Clements*, 2 Camp. 17), a much stronger case than the present one. Here, indeed, he actually knew of the tenant's insolvency; but it is apprehended that he would also be liable if he accepted him without taking reasonable means to ascertain his respectability.

Correspondence.

LAW EXAMINATIONS.—AVERAGE OF PLUCKING.

The results of the examinations of the Incorporated Law Society, held at different periods of the year, contrast in a remarkable manner. Taking much interest in the examinations, I have referred to the official statements, which show variations from as low as 4 per cent. to as high as 28 per cent. in the numbers of unsuccessful candidates; and, strange to say, the Hilary and Michaelmas examinations seem to be most fatal, whilst the Trinity is undoubtedly the most favourable, the number of postponements at the latter being generally very insignificant. As an illustration, at the last examination (Trinity), there were only 5 out of 125; but at Hilary, there were 28 out of 105. On comparing the results, for some years back, equally strange contrasts present themselves. Can any of your readers account for these phenomena?

July 2. A SUBSCRIBER.

Review.

Roscoe's Digest of the Law of Evidence in Criminal Cases. 5th edition, with considerable additions. By DAVID POWER, Esq., one of Her Majesty's Counsel, Recorder of Ipswich. London: V. & R. Stevens & Sons; H. Sweet; and W. Maxwell. 1861,

The Magisterial Formulist, being a complete Collection of Forms and Precedents for practical use in all Cases out of Quarter Sessions, and in Parochial Matters, by Magistrates, their Clerks, and Attorneys; with an Introduction, Explanatory Directions, Variations, and Notes. By GEORGE C. OKE, Assistant Clerk to the Lord Mayor of London, Author of "The Magisterial Synopsis," "The Laws of Turnpike Roads," &c., &c. 3rd edition, enlarged and revised. London: Butterworths. 1861.

Stone's Practice of Petty Sessions, with the Statutes, a List of Summary Convictions, and an Appendix of Forms. 7th edition. By THOMAS BELL, and LEWIS W. CAVE, of the Inner Temple, Esquires, Barristers-at-law. London: V. & R. Stevens & Sons; H. Sweet; and W. Maxwell. 1861.

The publication within a few weeks of three works relating to the Criminal Law looks as if both law authors and publishers had more faith in the prognostications of Mr. Coode, than in the long announced consolidation of our criminal law, which was to have been certainly and effectually achieved by the series of Bills for that purpose now before Parliament. It is so many years since the first attempt at a criminal code, and so many and such earnest promises have been made, during the last six sessions, about its complete achievement, we are not surprised that people have little faith in what the present inert session will do in the way of consolidating our criminal law. Although the Criminal Statutes Repeal Bill has been read a third time in the House of Commons, and the Consolidation Bills have made some progress, it is not very likely that the Statute Book for 1861 will contain a criminal code, even such as that comprised in the Bills of the Statute Law Commissioners, and castigated by Mr. Coode in his letter to Lord Palmerston which we recently noticed. If, contrary to general expectation, however, these Consolidation Bills shall forthwith become law, we shall, of course, require some new text books adapted to the new statutes. But until then we can hardly have anything better as a text-book for practitioners in criminal courts than the last edition of Roscoe, in which all the modern cases relating to the subjects comprised in the work have been methodically and accurately noted up by Mr. David Power, the present editor, with the assistance of Mr. Markby of the Northern Circuit. Both of these gentlemen have had considerable experience as counsel practising in criminal courts, and have proved themselves well qualified for the task which they have undertaken. Roscoe has been so long recognised as the best and most convenient book upon the law of evidence in criminal cases, that we need say nothing further of the present edition than that it is the most complete which has yet appeared; and whatever Parliament may do with the Consolidation Bills now before it will have little effect to render this volume less useful, except by altering the references from the old incorporated Acts to the new code. Nearly all if not the entire of that part of the work which relates to evidence and modes of proof will remain untouched; and so will the definitions of crime, although, so far as they are to be found in Acts of Parliament, the places of which will be changed whenever the code comes into operation. So that, at all events, until that long promised event occurs, barristers and solicitors who take sessions business cannot well do without a late edition of Roscoe, and even afterwards, whatever unscientific or fanciful shape the code may assume, they cannot be far astray so long as they have their old guide to consult.

Mr. Oke, the assistant clerk to the Lord Mayor, is also well known as a writer on criminal law. The late Lord Chancellor referred with praise to the author of the Magisterial Synopsis, in which Mr. Oke gives, according to a tabular arrangement, an account of summary convictions and indictable offences, and of the procedure relating to them in a manner which is extremely convenient for reference. His "Formulist," as the term implies, is mainly a collection of forms and precedents, and being the compilation of a gentleman of very great experience and learning in such matters, has been found extremely useful as a companion volume to the synopsis. The two volumes together constitute a complete library for magistrates, and are indispensable for their clerks, and for attorneys practising before magistrates. The new edition of "The Formulist," is 364 pages larger than the previous one, and contains many useful additions of special forms which are not to be found elsewhere. The best recommendation of the book, however, is that two editions have been exhausted since 1850, when the first edition was published.

Stone's "Practice of Petty Sessions" has also gone through several editions, the present being the seventh. It is a small and unpretending volume; and in a great measure the present edition may be (as, indeed, it is confessed by its editor to be) a compilation from larger works on criminal law, and particularly Mr. Oke's "Synopsis," to which we have just referred. This little work, however, has been found a compendious manual for young practitioners and magistrates who do not care to be very learned in their office. It contains an appendix of the forms in common use, and may be taken as a reliable guide as far as it goes.

Obituary.

SIR JOHN PATTESON, KNT.

The decease of Lord Campbell has been soon followed by the death of another eminent judge, Sir John Patteson, who expired on the 28th ult., at his seat Feniton-court, near Honiton, Devonshire. He was born at Norwich in 1790, and was the second son of the Rev. Henry Patteson, of Drinkstone, Suffolk, by the daughter of Mr. Richard Ayton Lee, a banker in London. Sir John's paternal uncle, John Patteson, for some time represented the city of Norwich in Parliament. The deceased judge was educated at Eton, where he was a pupil of the present Primate. He was elected on the foundation, and succeeded to King's College, Cambridge, where he was the first that obtained the Davies' University scholarship. Besides a fellowship, he obtained in that university the degree of B.A. in 1813, and that of M.A. in 1816. He soon afterwards entered at the Middle Temple and became a pupil of Mr. Joseph afterwards Justice Littledale. Sir John commenced practice as a certificated special pleader, and soon acquired

very large practice, and had a great number of pupils, many of them being Irish students, and among whom was the Right Hon. Joseph Napier, late Lord Chancellor of Ireland, who was greatly distinguished at the Irish bar as a pleader. The deceased judge was called to the bar in 1821, and soon rose to eminence on the Northern Circuit, which was then eminent both for its leaders and juniors. He had a very large junior business, and was often called upon to argue important cases at Westminster. At the close of his argument in the case of *Reynell* v. *The Bishop of Lincoln*, Mr. Justice Bayley handed him a note from the bench worded thus:—"Dear P., per Tenterden, C.J.—An admirable argument; shows him fit to be an early judge." He was much engaged in *quo warranto* cases, and on the Crown side of the Court of King's Bench; and he drew the pleadings, in the case of the Cato-street conspirators, against Thistlewood and his confederates. Time, however, did not admit of the full development of his forensic powers. In 1830 he was elevated, within the unusually short period of nine years from the date of his call, to a *puisne* judgeship in the Court of Queen's Bench, upon which occasion he received the honour of knighthood. Upon the adoption by Parliament of the report of the Common Law Commissioners, of whom Mr. Patteson was one, the Welch Judicature was abolished, and three new judgeships established to meet the consequent increase of business; thus altering the historic number of the common law judges from twelve to fifteen. Lord Lyndhurst selected Taunton, Alderson, and Patteson—the first and last to the Queen's Bench—Sir James Parke being translated from the latter court to the Court of Exchequer. Mr. Justice Patteson had not previously a silk gown; he had never led a cause or addressed a jury. Yet, owing to the urbanity of his manner, and the acknowledged goodness of his disposition, his promotion gave satisfaction to all.

He enjoyed the entire confidence of Lord Tenterden, notwithstanding the difference in standing and age between the Lord Chief Justice and him. With Lord Denman his intimacy was of the most cordial character. Lord Campbell likewise held the abilities of his senior *puisne* in the highest estimation, and both in public and private, was lavish of his encomiums on him.

Sir John was distinguished on the bench for lucid judgments, and deep and extensive knowledge of law, as also for good sense and courtesy. He had great breadth of view, and rare sagacity in applying the principles of law to the cases before him. This was the more important during the reign of special pleading, which was calculated to engender, both in the court and in the bar, an acute and critical habit of mind rather than broad or sound principles of judgment.

He had great urbanity of manner united to tenderness of disposition. This latter quality was doubtless the cause of his retirement. He became deaf, and was so tender of the interests committed to his charge that it caused him to withdraw even from the Judicial Committee, where there is little forensic bustle. His memory is associated with the most pleasing recollections, in the minds of all who knew him either in his judicial capacity or in private life. In 1852, on his departure from the Bench, Sir Alexander Cockburn, the then newly appointed Attorney-General, made a very touching speech, which was listened to with the entire sympathy of the bar. Sir John was very much moved, and expressed a hope that his deafness, or, as he supposed, his irritability, had not caused injustice in any case.

In the important and well-known case of *Stockdale* v. *Hansard*, which involved a conflict between the courts of law and the House of Commons, he concurred with his Court in their opinion of the paramount authority of courts of law. The case is commented on in the first volume of Smith's Leading Cases, under that of *Ashby* v. *White*, in which a similar struggle for superiority arose between the Lords and the Commons. Sir John, soon after his retirement from the bench, was made a member of the Privy Council, and was very constant in his attendance on appeals before the Judicial Committee. He was appointed, in 1853, a commissioner to inquire into the state of the Corporation of the City of London. He was also appointed to determine the limits of the jurisdiction of the Mayor and Corporation of Cambridge as against the University of Cambridge. Of late years, owing to increasing infirmities, he had entirely withdrawn himself from judicial duties. The cause of his death was a lingering and painful one—cancer of the throat.

Sir John was twice married; first to the third daughter of Mr. George Lee, of Dickleburgh, Norfolk; and secondly, to a daughter of Mr. James Coleridge, of Ottery St. Mary, Devonshire, and sister of Mr. Justice Coleridge. The deceased judge survived his second wife, and has left several children, one of whom was recently consecrated a missionary bishop to the islands of the South Pacific Ocean; and another was also, some short time since, appointed a revising barrister for one of the districts on the Northern Circuit. Since his retirement from judicial functions, Sir John Patteson resided wholly at his seat in Devonshire, where he dispensed a cordial hospitality, as well as a freely given advice and arbitration, to all who sought his aid. The deceased judge was a good type of the erudite and benevolent English gentleman, as well as of the clear, learned, and painstaking judge. Sir John paid a visit about six years ago to the members of the Northern Circuit at Liverpool, where he was most warmly received by all, his name having been a tradition upon that circuit for everything that was dignified and humane. His name will, doubtless, be long held in veneration.

LAW STUDENTS' DEBATING SOCIETY.

The following is the report of the committee of this Society to the annual meeting of its members, which was held on Tuesday last:—

Gentlemen—The committee, in presenting their annual report, have great pleasure in recording their unanimous opinion that the society was never in a more flourishing condition than at the present time, numbering more than a hundred members, of whom fully seventy attend the debates. The register book shows that ninety-two members have spoken on the various subjects during the last three months, and the average during the year is fully eight to each question, there being twenty-five present at each of the twenty-nine meetings that have been held; and when it is remembered that, on two occasions, no question was discussed, the time having been occupied in disposing of motions respecting alterations in the proceedings of the society, these and other statistics will be considered satisfactory. The debate has occupied nearly two hours and a half, and sixteen votes have been recorded each evening this quarter. Nineteen legal and ten jurisprudential questions have been discussed during the year, upon one of which there was an adjournment.

In consequence of long-continued absence and nonpayment of fines and subscriptions, the names of seven gentlemen have been erased from the list of members, and eight others have resigned from their having left town and other causes. A more than equivalent addition has, however, been made, as twenty-eight new members have been elected.

During the current year it was resolved: "That no member of this society, other than the opener of the debate, should in future be permitted to speak on any question for a longer period than twenty minutes. And also, that any member desirous of withdrawing from the society should send his resignation in writing to the secretary."

The abolition of the custom of members giving notice of absence for their friends does not appear to have been productive of any personal inconvenience, and is likely to produce regular attendance.

It gives us much pleasure to report that at each of the examinations, members of this society have obtained prizes, certificates of merit, or have been otherwise honourably distinguished.

Several changes have taken place in the committee of management since the last annual report. At the annual meeting Mr. Wingate was elected secretary in the room of Mr. Bradford, and Mr. Marchant, not desiring to be re-elected, Mr. Green was chosen in his place. Since then Mr. Miller resigned the office of treasurer, to which Mr. Lawrance was elected, the vacancy being thus caused in the committee was supplied by Mr. Bradford. Mr. Plaskitt and Mr. Matthews subsequently retiring, were replaced by Mr. Dowse and Mr. Hills.

Mr. Jackson has also been elected an auditor, in conjunction with Mr. Richard.

Your committee have given their careful consideration to upwards of forty legal questions proposed for discussion, and have been enabled to approve of twenty-three, all of which have appeared in the papers, as well as some very interesting ones of a jurisprudential character, which have afforded a constant succession of new and varied subjects of the highest order, upon which much difference of opinion has been well expressed. And in consequence of the great diversity of authorities to be found on each of the legal questions, very able arguments have been adduced, and narrow majorities

invariably obtained, as appears from the president's book. We desire to render our best thanks to those members who have afforded us assistance by proposing questions for discussion, and at the same time to remind you of the absolute necessity there is that great diligence should at all times be shown in this respect, particularly during the coming vacation.

The committee, however, feel compelled to call attention to the fact that many members have habitually omitted this necessary duty, thereby putting the committee to great inconvenience.

The society has been in existence for a quarter of a century, having completed its twenty-fifth year in the month of May last. Your committee cannot help thinking that this fact calls for special notice at their hands, and that it is a subject of congratulation that the society has been gradually increasing in strength and influence from year to year since its formation; and they feel sure that, as its advantages become better known and appreciated by the younger members of the profession, its influence will become more widespread, and that it will, at no distant period, be recognised by the profession at large as an institution which deserves their support, for the energy which it displays in endeavouring to stimulate the abilities and cultivate the debating powers of all who enrol themselves in its ranks, and who by its means acquire one of the many attributes which at the present day are needed to ensure success in the profession of the law.

Our example has, we have every reason to believe, been extensively followed by the formation of similar societies in most of the large provincial towns, and we take this opportunity of suggesting that great advantage would accrue if general intercommunication could be established.

Your committee have had their attention directed to a letter which appeared in the *Solicitors' Journal* in April last, and in which the writer complained of the arbitrary and exclusive nature of sec. 2, of rule 1, which restricts the right of admission to the society to such persons as are either subscribers to the library or lectures of the Incorporated Law Society, or are clerks articled to members of that society, or who, having been articled, are in the service of members of that society. It was urged that by such restriction the usefulness of the society was lessened, and there was no reason why the doors of the society should not be open to every articled clerk who wished to avail himself of its privileges. To this letter the treasurer replied that, while it was far from the intention of the society to limit its sphere of action or narrow its usefulness, yet that, in deference to the Council of the Incorporated Law Society, to whom it owes many advantages, it could not break faith with the council by a relaxation of the rule in question, inasmuch as these advantages were especially intended to be conferred upon those persons who were, in some way or another, connected with the Incorporated Law Society, an institution which affords valuable assistance to students for methodising and extending their legal knowledge by the use of an extensive library and attendance at the lectures delivered under its auspices.

The committee hope and believe that in arriving at this conclusion, not only were the best interests of the society consulted, but also that the treasurer acted in accordance with the wishes and instructions of the Council of the Incorporated Law Society, who have always shown this society much liberality and consideration.

The treasurer's report of the receipts and payments for the year has been audited, and shows a balance in favour of the society.

In conclusion, your committee beg to impress upon students the importance of early acquiring the art of giving expression to their thoughts with self-possession and perspicuity; this can only be acquired by practice, and no better means will be found than a constant attendance at the debates of this society.—We are, gentlemen, your obedient servants,

EDWARD LAWRANCE, jun.
LEWIS WINCKWORTH.
J. BRADFORD.
MELVILL GREEN.
OCTAVIUS L. HILLS.
H. A. DOWSE.

GEO. L. WINGATE, Hon. Sec.

Law Institution, 2nd July, 1861.

Public Companies.

BILLS IN PARLIAMENT

FOR THE FORMATION OF NEW LINES OF RAILWAY IN ENGLAND AND WALES.

The following Bills have passed through committee in the House of Lords:—

BOGNOR.
HAMMERSMITH, PADDINGTON, AND CITY JUNCTION.
MANCHESTER AND MILFORD (Aberystwith branch).
MUCH WENLOCK.
SALISBURY AND DORSET.
SITTINGBOURNE AND SHEERNESS.
SOUTHAMPTON AND NETLEY.

The following Bills have been read a third time and passed in the House of Lords:—

LUDLOW AND OLEE-HILL.
MIDLAND (Otley and Ilkley Extension).
NORTH EASTERN (Extension to Otley).
WEST CHESHIRE.

REPORT OF MEETING.

PERPETUAL INVESTMENT SOCIETY.

The tenth annual meeting of this society was held on the 3rd inst., at which it was stated that the sum of £117,288 had been received during the year, making an aggregate, in ten years, of £915,012. A bonus of four per cent. was declared, making, with the interest, 8½ per cent.

Births, Marriages, and Deaths.

BIRTHS.

BOURNE—On June 24, at Dudley, the wife of James S. Bourne, Esq., Solicitor, of a daughter.

CORRIE—On June 27, at 20, Leinster-square, Kensington-gardens, the wife of William Corrie, Esq., of a son.

FIELDING—On July 1, at Canterbury, the wife of Allan Fielding, Esq., Solicitor, of a son.

PERCIVAL—On June 28, at Peterborough, the wife of Andrew Percival, Esq., Solicitor, of a son.

MARRIAGES.

CRESSWELL—HANDS—On June 22, George Cresswell, Esq., Solicitor, of Willenhall, to Sarah Ann, daughter of Mr. F. Hands, of Bloomsbury.

NEWBALD—BETTISON—On June 25, Henry Newbald, Esq., Solicitor, Newark-upon-Trent, to Helen, daughter of W. Bettison, Esq., Oxton, Cheshire.

ROBINSON—MOON—On July 2, James Robinson, Esq., Solicitor, of Clement's-lane, Lombard-street, to Mary, daughter of Henry Moon, Esq., M.D., of Brighton.

DEATHS.

HANCOCK—On July 1, Charles Hancock, Esq., Solicitor, of Tokenhouse-yard, City, aged 44.

KING—On July 3, Alfred King, Esq., of 4, Dane's-inn, Strand, Solicitor, in his 61st year.

SLANEY—On June 29, Thomas Slaney, Esq., Solicitor, of Birmingham, aged 51.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Name will be transferred to the Party claiming the same, unless other Claimant appear within Three Months:—

DENISON, SAMUEL, Esq., Bedford-row, £500 Old South Sea Annuities.—Claimed by MARGARET ELLIOTT SANDES (heretofore Bowzer, spinster), wife of William Gough Sandes, the surviving executrix of Lucy Bowzer, Widow, who was the surviving executrix of the said Samuel Denison.

WOOD, ANDREW, Gent., Leatherhead, Surrey, £3,800 Reduced Three per Cents.—Claimed by JAMES BARLOW, the surviving executor.

London Gazettes.

Professional Partnership Dissolved.

TUESDAY, July 2, 1861.

BUTLIN, CHARLES, & RICHARD ARTHUR DUFTY, Attorneys and Solicitors, Nottingham; by mutual consent. June 29.

FRIDAY, July, 5, 1861.

NETHERSOLE, HENRY, and HENRY JAMES OWEN (Nethersole & Owen), Attorneys & Solicitors, 1, New-inn, Middlesex, by mutual consent.

Windings-up of Joint Stock Companies.

LIMITED IN BANKRUPTCY.

TUESDAY, July 2, 1861.

HADFIELDS' PATENT CASK AND PACKING CASE COMPANY (LIMITED.)—Proof of debts. July 24, at 12; Liverpool.

UNLIMITED IN CHANCERY.

FRIDAY, July 5, 1861.

NATIONAL INDUSTRIAL AND PROVIDENT SOCIETY,—Order to wind up June 29. M.R.

NATIONAL INDUSTRIAL AND PROVIDENT SOCIETY.—The Master of the Rolls has appointed Robert Palmer Harding, 3, Bank-buildings, London, and 5, Serle-street, Lincoln's-inn, Middlesex, Interim Manager of this company.

NATIONAL INDUSTRIAL AND PROVIDENT SOCIETY.—Creditors to meet on July 16, at 2, at Roll's-yard, Chancery-lane, for the purpose of appointing creditors' representative.

LIMITED IN BANKRUPTCY.

FRIDAY, July 5, 1861.

PLUMSTEAD AND WOOLWICH CO-OPERATIVE PROVISION COMPANY (LIMITED). —Creditors to prove their debts before Com. Holroyd, at Basinghall-street, on July 12, at 11.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, July 2, 1861.

COCKE, JOHN, formerly Grocer and Tallow Chandler, Guildford, but late of Ripley, Surrey, Gent. Capron, Solicitor, Guildford. Aug. 9.

DAWE, RICHARD, Gent., Trevadlock, Lewannick, Cornwall. Nicolls, Solicitor, Callington, Cornwall. July 20.

HOLME, ANN, Widow, Abbey-street, Greenheys, Manchester. Redfern, Solicitor, Oldham. Aug. 31.

HOLWORTHY, DIANA SARAH, Widow, Brighton. Desborough, Young, & Desborough, Solicitors, 6, Size-lane, London. Aug. 1.

HYDE, CHARLES, Esq., Hyde End, Berks, and Fladong's Hotel, Old Cavendish-street, Middlesex. Parker, Rooke, & Parkers, 17, Bedford-row, London, W.C. Sept. 1.

LETCHER, JOHN JAMESON, Bullo Pill, Gloucestershire. Carter & Goold, Solicitors, Newnham. Sept. 1.

MASON, THOMAS, Jamaica Coffee House, St. Michael's-alley, Cornhill, London. Hoppe & Boyle, Solicitors, 3, Sun-court, Cornhill. Sept. 9.

OLIVER, DAVID, Licensed Victualler, Load of Hay Public House, Praed-street, Paddington, Middlesex. Gray & Berry, Solicitors, 108, Edgware-road, W. Sept. 1.

SUMNER, ANNE, Spinster, Marsden's-square, Wigan, Lancashire. Marshall, Solicitor, King-street, Wigan. Aug. 1.

TUER, THOMAS, (and not SUER, as advertized in the Gazette of 28th June) Yeoman. Dufton, Westmoreland. Thompson, Solicitor, Appleby, Westmoreland. Sept. 7.

WARBURTON, JOHN, Agent, and Inspector of Weights and Measures, Bury, Lancashire. Redfern, Solicitor, Oldham. Aug. 31.

WOOD, Mrs. ISABELLA MARY, 5, Cambridge-terrace, Dover. Percy & Goodall, Solicitors, Nottingham. Aug. 1.

FRIDAY, July, 5. 1861.

CARELESS, JAMES, Free Vintner, Epsom, Surrey, formerly of the Paxton Arms Tavern, Anerly, said county, Licensed Victualler. White & Ward, Solicitors, County Court, Epsom. Aug. 1.

COURTENAY, THOMAS PEREGRINE, Esq., South Town, Kenton, Devonshire. Buckingham, Solicitor, Southernhay, Exeter. Aug. 15.

GREENWOOD, ELIZABETH, Widow, Watkyn-terrace, Camberwell, Surrey. Sills & Gordon, Solicitors, 18, Old Broad-street, London. Sep. 4.

HARTCOP, WILLIAM, Gent., Little Hampton-street, otherwise Hampton-street, Birmingham. Maudesley, Solicitor, 41, Temple-street, Birmingham. August 19.

HUDDELL, JACOB, Coal Fitter & Ship Broker, Sunderland. Ranson & Son, Solicitors, 12, East Cross-street, Sunderland, or Kidson, Solicitor, 66, John-street, Bishopswearmouth. Aug. 1.

KITLEY, ANN, Widow, 1, Elizabeth Cottages, Grove-hill, Tunbridge Wells, Kent, but late of Prince of Wales Public House, Sudeley-street, Islington, Middlesex. Mackeson & Goldring, Solicitors, 59, Lincoln's-inn-fields. Sept. 1.

KITLEY, HENRY, Licensed Victualler, Prince of Wales Public House, Sudeley-street, Islington, Middlesex. Mackeson & Goldring, Solicitors, 59, Lincoln's-inn-fields. Sept. 1.

NEWBY, ANNA MARIA, Widow, Tranmere, Chester. Fisher & Son, Solicitors' Liverpool. Aug. 16.

PEACE, WILLIAM, Mining Engineer & Colliery Viewer, Haigh, near Wigan. Peace, Solicitor, Wigan. Aug. 5.

TODD, ANTHONY, sen., Butcher, Coleshill, Warwickshire. Cottrell, Solicitor, 22, Bennett's-hill, Birmingham. Aug. 8.

WAGNIERE, CHARLES, Gent., 2, Upper Kennington-green, Lambeth, Surrey. FISHER, Solicitor, 16, Furnival's-inn, London. Sept. 1.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, July 2, 1861.

CARPENTER, JOHN, Miller, Hunton Bridge, Abbotts Langley, Herts. White v. Chester, V.C. Wood. July 20.

FORREST, WILLIAM, Curiosity Dealer, 54, Strand, Middlesex. Forrest v. Harrington, M. R. July 29.

HARE, JOHN WILLOX, Stationer, 1 and 2, Brunswick-place, Brunswick-street, Blackwall, Middlesex. Bird v. Hare, V.C. Wood. July 21.

HARROP, JOHN GASKELL, Solicitor, Torkington, Cheshire. Harrop v. Holt, M. R. July 30.

HIRD, ANTHONY, Upholsterer, 143, Tottenham-court-road, Middlesex. Ablett v. Hunter, V.C. Stuart. July 15.

KNOTT, WILLIAM, Esq., 3, Newington-place, Kennington, Surrey. Bousfield v. Bousfield, M. R. July 29.

LING, JOHN THEODORE, formerly a Lieutenant in her Majesty's 14th Regiment of Light Dragoons, and late of her Majesty's 2nd Regiment of Dragoon Guards. Bidwell v. Bremridge, V.C. Stuart. Nov. 1.

MACHIN, EDWARD, Upholsterer, Birmingham. Baker v. Machin, V. C. Kindersley. July 20.

PENRY, HENRY, Oxford-street, Swansea, Glamorganshire. Penry v. Penry, M. R. July 25.

ROSS, Sir WILLIAM CHARLES, Knight, 38, Fitzroy-square, Middlesex. Chapman v. Ross, V.C. Stuart. July 19.

FRIDAY, July 5, 1861.

CANNON, THOMAS, Coffee Planter, Wastara Talook, Mysore Territory, East Indies. Allardice v. Onslow, V.C. Kindersley. Feb. 28, 1862.

DREDGE, WILLIAM, Accountant, formerly of London-street, Reading, Berks, and late of Dipley, Hants. Dredge v. Dredge, V.C. Stuart. July 22.

EDWARDS, WILLIAM, Innkeeper, Tredegar, Monmouthshire. Edwards v. Richards, M. R. July 30.

GRAY, SARAH ANN, Leckhampton, Gloucestershire. Gray v. Wing, V.C. Stuart. July 30.

LAMPRELL, CHARLES FITCH, Licensed Victualler, 12, Cannon-street, London. Lamprell v. Johnson, V.C. Wood. July 19.

LEIGH, JOHN, Clerk, Eggington, Derbyshire. In the matter of the Rev. John Leigh, V.C. Kindersley. Aug. 5.

MULLENEUX, JOHN WOOLFALL, Distiller, Liverpool. Laurence v. Mullenux, V.C. Wood. July 27.

WING, BENJAMIN, Gent., Springfield, Essex. Gray v. Wing, V. C. Stuart. July 30.

Assignments for Benefit of Creditors.

TUESDAY, July 2, 1861.

BARWISE, JOHN, Draper, Bilston, Staffordshire. June 5. *Sols.* Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester.

FLETCHER, EDMONDSON, Draper, Clapham-common, Surrey. June 5. *Sol.* Reed, 3, Gresham-street, London.

HANCOCKS, GEORGE, Bookseller, Stationer, and Printer, Cross-street, Abergavenny, Monmouthshire. June 11. *Sol.* Batt, Abergavenny.

HART, HENRY, Farmer, Halling and Snodland, Kent. June 14. *Sols.* Few & Cole, 40, Wellington-street, Southwark, London Bridge, S.E., agents for King & Hughes, Maidstone.

HIRST, WILLIAM, Golcar, Yorkshire. June 20. *Sol.* Clough, 37, Market-street, Huddersfield.

HORSEFIELD, THOMAS STANLEY, Tobacconist, Rusholme-road, Manchester. June 1. *Sol.* Hankinson, 3, Essex-street, Manchester.

LEWIS, WILLIAM, Publican, the Holly Bush, Whitchurch, Glamorganshire. June 24. *Sol.* Matthews, Church-street, Cardiff.

MARFELL, JOHN, General Shopkeeper, Painter, and Glazier, Drybrook, East Dean, Gloucestershire. June 8. *Sol.* Whatley, Mitchel Dean, Gloucestershire.

SHEARD, HENRY, & SAMUEL SHEARD, Manufacturers, Batley, Yorkshire (Sheards & Senior.) June 10. *Sol.* Scholefield, Batley.

FRIDAY, July, 5, 1861.

BROAD, THOMAS, Woollen & Linendraper, Fore-street, Tiverton, Devonshire. *Sol.* Morris, 6, Old Jewry, London. June 10.

COBBY, ALFRED, Pianoforte Dealer, Bognor, Sussex. *Sol.* Perkins, 13, Great James-street, Bedford-row, Middlesex. May 30.

DALBY, WILLIAM, and JOHN HADFIELD, Builders, Burton-upon-Trent, Staffordshire. *Sol.* Bass & Jennings, Burton-upon-Trent. June 19.

DIXON, ROBERT, Coal Merchant, Pier Wharf, Wandsworth, Surrey. *Sol.* Bower, 6A, Tokenhouse-yard, London. May 9.

HARVEY, GEORGE, Whitesmith & Fish Merchant, Great Yarmouth, Norfolk. *Sol.* Holt, Great Yarmouth. July 3.

HIGGS, JOHN SEAGRAVE, Innkeeper, Market Harborough. *Sol.* Chamberlain, Desford. June 25.

MANDERS, ROBERT, Tailor, 33, High street, St. Stephen, Exeter. *Sol.* Bush, 9, Bridge-street, Bristol. June 17.

PILGRIM, RICHARD, Farmer, Albrook, Kingsteinton, Devonshire. *Sols.* Francis & Baker, Newton Bushel, Devonshire. June 13.

ROBINSON, JOHN MALLAM, Draper & Milliner, Grainger-street, Newcastle-upon-Tyne. *Sols.* Lever & Son, 1, Frederick's-place, Old Jewry, Agents for B. & T. R. Wheldon, North Shields. May 21.

SUTTON, JOHN FROST, Printer, Nottingham. *Sol.* Hunt, Nottingham. June 11.

WATSON, WILLIAM, & JAMES MELVILLE GRANT, Dyers, Heudham Vale, Collyhurst, Manchester (Watson & Grant). *Sols.* Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester. June 13.

Bankrupts.

TUESDAY, July 2, 1861.

BATLEY, RICHARD, Timber Dealer, 5A, Park-village East, Regent's-park, Middlesex. *Com.* Evans: July 15, at 2, and Aug. 17, at 12.30; Basinghall-street. *Off. Ass.* Bell. *Sol.* Billing, Chapel-place, Poultry. *Pet.* June 29.

DONLEVY, HENRY, Glass Manufacturer, New York, Brinsworth, Rotherham, Yorkshire. *Com.* West: July 13, and Aug. 3, at 10; Sheffield. *Off. Ass.* Brewin. *Sol.* Vickers, Sheffield. *Pet.* June 28.

GRABNS, JOHN, & FREDERICK AUGUSTUS TARRANT, Auctioneers, 27, Bucklersbury, London. *Com.* Evans: July 12, at 1, and Aug. 17, at 12; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Lawrance, Plews, & Boyer, Old Jewry-chambers. *Pet.* June 28.

GREEN, WILLIAM, Licensed Victualler and Tavern Keeper, Liverpool. *Com.* Perry: July 10, at 12.30, and Aug. 2, at 11; Liverpool. *Off. Ass.* Morgan. *Sols.* Lowndes, Bateson, Lowndes, & Robinson, Brunswick-street, Liverpool. *Pet.* June 26.

GRIFFIN, MICHAEL, Leather Dealer, Liverpool. *Com.* Perry: July 13, and Aug. 2, at 11; Liverpool. *Off. Ass.* Bird. *Sols.* Woodburn & Pemberton, Liverpool. *Pet.* June 22.

JESSOP, JOHN, Innkeeper, Maltster, and Farmer, Preston Brockhurst, Salop. *Com.* Sanders: July 15, and Aug. 5, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Cooper, Shrewsbury, or James & Knight, Birmingham. *Pet.* June 22.

JOSEPH, JOHN, Importer of Foreign Goods, 87 and 88, Houndsditch, and 8, Alton-terrace, Albion-road, Dalston, Middlesex. *Com.* Evans: July 15, at 2.30, and Aug. 14, at 12; Basinghall-street. *Off. Ass.* Bell. *Sols.* Sydney & Son, 46, Finsbury-circus. *Pet.* June 28.

LEGGE, JOB, Draper and Haberdasher, Willenhall, Staffordshire. *Com.* Sanders: July 15, and Aug. 5, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* James & Knight, Birmingham. *Pet.* July 1.

LLOYD, NATHAN KIMBERLEY, Grocer, Birmingham. *Com.* Sanders: July 12, and Aug. 2, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Collis & Ure, Birmingham. *Pet.* July 1.

MARTIN, WILLIAM GEORGE, Innkeeper and Furniture Dealer, Risca, Monmouthshire. *Com.* West: July 16, and Aug. 27, at 11; Bristol. *Off. Ass.* Acraman. *Sol.* Cathcart, Newport, Monmouthshire, or Brittan & Son, Small-street, Bristol. *Pet.* June 27.

MOSSOP, JOHN, Provision Dealer, Liverpool. *Com.* Perry: July 15, and Aug. 2, at 11; Liverpool. *Off. Ass.* Turner. *Sol.* Tyrer, Liverpool. *Pet.* June 24.

MOWAT, JOHN ALEXANDER, Boot and Shoe Maker, 115, Crawford-street, St. Marylebone, Middlesex. *Com.* Fane: July 12, at 2, and Aug. 10, at 11; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Rushbury, 32, Coleman-street, London. *Pet.* June 17.

PRESTON, JAMES, Tobacconist, 2, Kingsland-gate Bazaar, Kingsland-road, Middlesex. *Com.* Holroyd: July 12, at 12.30, and Aug. 13, at 2; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Morris, Stone, Townson, & Morris, Moorgate street-chambers, London. *Pet.* June 26.

SYDDEN, JOHN, Builder, 1, Charles-terrace, Paxton-park, Sydenham, Kent. *Com.* Fane: July 12, at 11, and Aug. 9, at 12.30; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Flux & Argles, 68, Cheapside. *Pet.* July 1.

FRIDAY, July 5, 1861.

DENNIS, JOSEPH, Draper & Milliner, Sneinton, Nottingham. *Com.* Sanders: July 18, and Aug. 6, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Coope, Nottingham. *Pet.* June 29.

FLEET, SAMUEL, Mercer & Draper, Audlem, Chester. *Com.* Perry: July 22, and Aug. 7, at 11; Liverpool. *Off. Ass.* Bird. *Sol.* Tyrer, Liverpool. *Pet.* June 26.

HALL, ROBERT, Army Clothier & Tailor, Great Warley, Essex. *Com.* Holroyd: July 15, and Aug. 13, at 11.30; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Wood, 27a, Bucklersbury, London; or Stone, Wall, & Simpson, Tunbridge Wells, Kent. *Pet.* July 2.

HARDEN, CHARLES, Warehouseman, 133, Fenchurch-street, London. *Com.* Fane: July 17, and Aug. 16, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Harrison & Lewis, 6, Old Jewry; or to Sole, Turner & Turner, 68, Aldermanbury. *Pet.* July 4.

HILLIER, GEORGE, Marine Store Dealer, Trowbridge, Wilts. *Com.* Hill: July 16 & Aug. 27, at 11; Bristol. *Off. Ass.* Miller. *Sols.* Webber, Trowbridge, or Henderson, Bristol. *Pet.* June 28.

LAWS, JOHN, Chemist & Druggist & Omnibus Proprietor, 9, New Church-street, Marylebone, Middlesex. *Com.* Holroyd: July 16, at 11.30, & Aug. 20, at 12.30; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Bicknell & Bicknell, 79, Connaught-terrace, Edgware-road, London. *Pet.* July 4.

LENOX, HENRY, Merchant, Liverpool. *Com.* Perry: July 17 & Aug. 7, at 11; Liverpool. *Off. Ass.* Morgan. *Sols.* Lowndes, Bateson, Lowndes, & Robinson, 3, Brunswick-street, Liverpool. *Pet.* June 22.

MARTIN, JAMES, Watch Maker & Jeweller, Faversham, Kent. *Com.* Evans: July 15, at 1, & Aug. 15, at 11; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Langford & Marsden, Friday-street, Cheapside. *Pet.* June 28.

OVENDEN, HENRY FRENCH, Maidstone, Kent. *Com.* Evans: July 15, at 11.30, & Aug. 14 at 12.30; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Sole, Turner, & Turner, Aldermanbury. *Pet.* July 2.

VAGG, SAMUEL, commonly called or known as SAM. COLLINS, late of Hyde, Hendon, Middlesex, and now Licensed Victualler, 40, Gower-place, Bedford-square, Middlesex. *Com.* Fane: July 16, at 11, & Aug. 16, at 12; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Harcourt, 2, King's Arms-yard, City. *Pet.* July 2.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, July 2, 1861.

BELL, WILLIAM, Miller, Urpeth Mill, Chester-le-street, Durham. Aug. 1, at 12; Newcastle-upon-Tyne.—BRIGHT, HENRY SMITH, Merchant and Commission Agent, Kingston-upon-Hull (Taylor & Bright.) July 31, at 12; Kingston-upon-Hull.—FOWLER, JOHN, Stock and Share Broker, and Commission Agent, Whitehaven, Cumberland. Aug. 1, at 12.30; Newcastle-upon-Tyne.—HARRISON, ROBERT, JAMES KIERO WATSON, & HENRY PEASE, Bankers, Kingston-upon Hull (Harrison, Watson, & Co.) Aug. 7, at 12; Kingston-upon-Hull. Same time, separate estate of Robert Harrison. Same time, separate estate of James Kiero Watson.—HASSELL, SAMUEL TALBOT, Merchant, Kingston-upon-Hull. July 31, at 12; Kingston-upon-Hull.—HEATH, WILLIAM, & THOMAS STEVENS, Factors, Aldermanbury, London. July 24, at 11.30; Basinghall-street.—JENNENS, THEODORE HYLD, Papier Maché Manufacturer and Japanner, 6, Halkin-street West, Belgrave-square, and Church street, Chelsea, Middlesex. July 23, at 12; Basinghall-street.—LYON, SIMON, Cabinet Maker and Upholsterer, 23, Frederick's-place, Hampstead-road, Middlesex (James Simon Lyon). July 23, at 11; Basinghall-street.—MANSFIELD, ELIAS, Boat-wright, Timber Dealer, and Publican, Chesterton, Cambridgeshire. July 25, at 12; Basinghall-street.—MILLS, JOHN, Cotton Manufacturer, Royton, Oldham, Lancashire. July 25, at 12; Manchester.—PORTER, THOMAS, Chair and Cabinet Maker and Upholsterer, 8, Beauvoir-place, Kingsland, Middlesex. July 23, at 12; Basinghall-street.—PRIOR, EDWARD STAFF, & ALFRED STAFF PRIOR, Coal Merchants, Bishopsgate-street, Middlesex. July 23, at 12; Basinghall-street.—SALOMONSON, SAMUEL, Bill Broker and Scrivener, 33, Abchurch-lane, London. July 25, at 11.30; Basinghall-street.—SCHOFIELD, JAMES, & LOUIS HORRIE, Grease Manufacturers, Blue Pits, Rochdale, Lancashire, and Keighley, Yorkshire (Schofield & Horrie). July 25, at 12; Manchester.—WAGSTAFF, WILLIAM RACSTER, Wharfinger, Granary Keeper, and Steam Tug Owner, 155, Fenchurch-street, London. July 12, at 12; Basinghall-street.

FRIDAY, July 5, 1861.

ASHLEY, CHARLES KITCHEN, Common Brewer, Sheffield, Yorkshire. July 27, at 10; Sheffield.—BOOTH, JAMES, jun., Worsted Manufacturer, Bramley, Yorkshire (J. & J. Booth.) July 26, at 11; Leeds.—BRITTEN, JOHN, Dealer in Silk & Worsted Braids, Fringes, & other Goods, 32, Noble-street, Falcon-square, London, and 9, Park-road, Dalston, Middlesex. July 30, at 11.30; Basinghall-street.—CAPORN, FRANCIS MEREDITH, Lace Manufacturer, Nottingham. July 26, at 11; Nottingham.—CHOWN, HENRY CHARLES, Shoe Dealer, Sheffield, Yorkshire. July 27, at 10; Sheffield.—COX, WILLIAM, Grocer & Provision Dealer, 77, Dale End, Birmingham. July 27, at 11; Birmingham.—DEIGHTON, SAMUEL, Draper, Preston. July 26, at 12; Manchester.—DUFFIELD, JOHN, & WILLIAM RISPIN DAUBER, Grocers, Sheffield. July 27, at 10; Sheffield.—EDWARDS, JOHN, Draper, Cwm Yniscoy, near Pontypool, Monmouthshire. July 30, at 11; Bristol.—FENN, PATRICK, Umbrella & Parasol Manufacturer, 13 & 14, Milk-street, London. July 26, at 1; Basinghall-street.—HAINSWORTH, JONATHAN, Plumber & Glazier, Halifax. July 26, at 11; Leeds.—HOOD, CHRISTOPHER, & JOHN NIXON, Elastic Web Manufacturers, Nuneaton, Warwickshire. July 29, at 11; Birmingham.—JARVIS, CHARLES KEDMAN, Bookseller & Stationer, Division-street, Sheffield. July 27, at 10; Sheffield.—KIRK, WILLIAM, JOHN WALE, & JOHN KIRK, Coal & Timber Merchants, Mountsorrel, Leicestershire. July 26, at 11; Nottingham.—MARTIN, JAMES MARK, Ironmonger, Brazier, & Gas Fitter, Chesterfield. July 27, at 10; Sheffield.—MATHER, CHARLES BENJAMIN, Tea Dealer & Grocer, Newbury, Berks. July 26, at 11; Basinghall.-st.—M'MILLAN, ALEXANDER, & WILLIAM BLACKBURN, Woollen Warehousemen, Starcourt, Bread-street, Cheapside, London. July 26, at 11; Leeds.—MILLS, THOMAS, Elastic Web Manufacturer, Leicester. July 26, at 11; Notts.—NORTH, JOSEPH, Carrier & Contractor, Montague-street, Brighton. July 15, at 12.30; Basinghall-street.—ORMESHER, JAMES, & WILLIAM ORMESHER, Silk Manufacturers, Manchester, and also of Blackley, Lancaster (James & William Ormesher). July 18, at 12; Manchester.—PARRY, ELIZA, Timber Dealer, Liverpool. Aug. 2, at 11; Liverpool.—SIMON, LOUIS, Manufacturer, Nottingham. July 26, at 11; Nottingham.—WALE, ALFRED, Hosier, Nottingham. July 26, at 11; Nottingham.—WHITE, ROBERT, JAMES WHITE, & WILLIAM WHITE, Lace Manufacturers, Nottingham. July 26, at 11; Nottingham.—WILMOTT, SAMUEL, Lace Manufacturer, Nottingham. July 26, at 11; Nottingham

We cannot notice any communication unless accompanied the by name and address of the writer.

* * *Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher*

THE SOLICITORS' JOURNAL.

LONDON, JULY 13, 1861.

CURRENT TOPICS.

Deputations from the Metropolitan and Provincial Law Association, and the Manchester, Birmingham, and Lincoln Law Societies, have had an interview with Sir Cresswell Cresswell, on the subject of the General Order issued a short time since, respecting the business to be transacted by the Registrars of the District Courts of Probate. In the course of the interview his Lordship intimated that any proposal for an alteration in the Order must receive the previous sanction of the Lords of the Treasury, their Lordships having on the faith of the new Order made their arrangements respecting the salaries of the District Registrars.

In consequence of the above suggestion of Sir Cresswell Cresswell, the Metropolitan and Provincial Law Association has forwarded to the Lords of the Treasury a memorial, of which the following is a copy.

To the Right Honourable the Lords Commissioners of her Majesty's Treasury.

The humble memorial of the Metropolitan and Provincial Law Association,

Sheweth,—

That the Metropolitan and Provincial Law Association is composed of nearly 800 practising attorneys and solicitors in England and Wales.

That by recent orders of your lordships and of the judge of the Probate Court, the district registrars of such Court are required to prepare for personal applicants the necessary affidavits and evidence in support of their applications for probates and letters of administration, at a lower scale of fees to be taken for the use of the Government, than that prescribed to be taken by solicitors for their own use.

That Government has thus commenced to compete with solicitors for a portion of their professional employment, by offering to perform, by means of salaried officials, professional business for less than professional fees.

That the result of this competition is likely to be to attract to the Government officials the whole of the non-contentious business of the Court, which is vastly more in amount and importance than the contentious business.

That for the Government to enter upon such a competition would be harsh and oppressive towards any profession or calling, and is especially so towards a profession which is highly and exceptionally taxed, and which in respect of such excessive taxation is entitled to receive from Government protection against all invasion of its legitimate professional functions; and yet it is believed that it is the only profession or calling with which the Government has as yet sought to compete in the acquisition and transaction of business.

That your memorialists view with great alarm the introduction of a system which, if extended, may work great injustice and hardship on the legal, and also on other professions and callings, and may very much encroach upon the independent action and freedom from officialism which have hitherto happily prevailed in this country.

That this invasion of the practice of solicitors is a breach of the understanding, upon which, on the passing of the Probate Act, on the one hand, the whole body of proctors were at once admitted as solicitors; whilst, as an equivalent on the other, the business previously transacted by proctors, of which the non-contentious is the more valuable portion, was thrown open to solicitors.

That if the Government should still think it right to transact the business in question, it would be but just that it should do so only at the same scale of fees as are thought to be a fair remuneration to solicitors.

That it is not advantageous to the community that facilities and encouragement should be offered to personal applications for the grants of probates and letters of administration, inasmuch as the registrars cannot, in most cases, know anything of the applicants personally, nor have any means of protection against fraud and forgery, whilst a solicitor must in every case know something, at least, of the applicants, and generally all the peculiar circumstances upon which a judgment could be formed as to the propriety of granting or refusing the application. It is quite compatible with the system of permitting personal application that probates of forged wills and grants of letters of administration to living persons may be obtained, and that without difficulty, and the funded and other personal property of the supposed deceased be realised and the fraudulent parties have absconded with the proceeds before the owner could be aware of the transaction. The registrar can have no means of judging whether the will produced is a genuine or a forged one, whether the supposed deceased be really living or dead, whether there be or not a subsequent will to that propounded, nor whether the testator was sane or insane or under undue influence; whilst, on the contrary, the solicitor, who is responsible as an officer of the court, feels it to be his duty to inquire into all these circumstances.

That in the Manchester district registry a case has already recently happened—viz. that of Ann Dean, in which, upon personal application to the registrar, probate of a forged will has been obtained; and the present system offers every facility for the repetition of such an imposition.

That to permit the same official, who is constituted the arbiter and judge of the sufficiency of the evidence which may be brought before him to entitle the applicant to grant of probate or administration, to be the preparer and getter up of such evidence, is inconsistent with all known systems of jurisprudence in this country, and with all correct principle, and a dangerous innovation in itself, and the duties which the registrars now have to perform under it are inconsistent and conflicting.

Your memorialists therefore humbly pray that your lordships will take such measures in concert with the judge of the Probate Court, as will prohibit the registrars from preparing or being in any wise concerned in preparing the evidence in support of applications for grants of probate or administration; and that in the meantime, your lordships will be pleased to direct that the fees to be taken by them for so doing shall be the same as those which are now prescribed to be taken by solicitors.

And your memorialists will ever pray, &c.

Signed on behalf of the Metropolitan and Provincial Law Association,

J. S. TORR, *Chairman.*
PHILIP RICKMAN, *Secretary.*

It will be seen that the statements in this memorial are substantially to the same effect as those addressed to the judge ordinary, which were contained in our impression of last week. It is obviously desirable that all the provincial law societies, and where there are none, that local solicitors, should address themselves to the Lords of the Treasury in support of the movement for the abrogation of the new order. It will not be necessary to do more than memorialise in general terms against the obnoxious innovation; as abundant argument upon the question has already been adduced, and all that is wanted is to show that the grievance complained of is generally felt and resented. But the attention of the authorities should be called to any particular cases, like that which has happened in the Manchester District, showing the actual injury which arises from the employment of district registrars as the private solicitors of parties applying for probate or administration. It is to be observed that the recent general order does not apply to London. At the same time, London solicitors have a deep interest in the question, as the intention was, no doubt, to introduce the same practice in the metropolis after it had been tried in the provinces.

Several petitions from provincial law societies in favour of the Government concentration of courts scheme have been presented to both Houses of Parliament during the week; and there can be no doubt that the great body of solicitors, not only in London but throughout the provinces, feel a deep interest in the passing of the two Bills now before Parliament for providing a site and funds for the new building. But there

appears to be little hope at this late period of the session that these Bills will be passed into law, although undoubtedly the Government is sincere in its efforts to push them forward. The real obstacle is the *vis inertiæ* of Parliament, and not any particular opposition which the measure has had to encounter. The reasons for and against it have been so long and fully discussed that the question of concentration, and also of the site for the new palace of justice, may be considered as definitively settled not only by the report of the commissioners, which is conclusive in point of argument, but also by the common consent of all intelligent persons whose judgments are not affected by personal or special considerations. Neither does there seem to be any serious difficulty about the proposed application of the Chancery fee funds, for the purpose of providing the requisite buildings. Yet there now appears to be almost a certainty of the postponement for at least another session of this important and well considered measure. The Joint Stock Companies Bill, the Highways Bill, the County Courts Consolidation Bill, the Artistic Copyright Bill, the Domicile Bills, and the Copyright of Designs Bill, are not unlikely to share the same fate, although some of them have made considerable progress. What is to become of the Criminal Law Consolidation Bills is still extremely uncertain, as their further progress in the House of Lords is delayed by the stoppage in the House of Commons of the Offences against the Person Bill, which is one of the batch, and has not yet been considered by the lower House. The Trade Marks Bill was sent up to the House of Lords some weeks ago, since which time it appears to have slept. We have heard nothing for some time of the Statute Law Revision Bill, but it will probably receive the sanction of Parliament before the conclusion of the session. The Bankruptcy Bill is still in a very uncertain position: but as Lord Palmerston has named so early a day as Monday for the Government to state its intentions with reference to the Lords Amendments to the Bill, it would seem that Ministers are anxious that they should boast of the enactment of this Bill, at least, as the fruit of the present session.

Some months ago we took occasion to call the attention of the benchers of Gray's-inn to the scandalous revelations respecting two members of that society which were made in a trial in which one of them was a plaintiff, and the other a defendant; and we called upon the benchers to vindicate the character of their ancient and honourable Society, by immediately instituting inquiries into the matters which had been disclosed, so far as they affected the character of the persons in question. We believe that in doing this, we merely gave expression to the feeling of the general body of the profession, who are certainly interested in the good name of its members, and especially of those who, from their position as advocates, may be considered in a great measure to represent the whole body in the eye of the public. We are sorry to say, however, that notwithstanding this appeal to the benchers of Gray's-inn, they have taken no step to set themselves or the profession right with the public in respect of the subject of our complaint. It has been privately rumoured, indeed, that some investigation has actually taken place; but what the result of it has been, is a secret. Whether the person who, according to the evidence upon the trial, pursued the double avocation of law student and bill discounter, is still a probationer for the dignity of barrister-at-law, or has been expunged from the roll of his inn of court, is a matter upon which we can satisfy ourselves only by making private inquiries for that purpose. It is said that the benchers of Gray's-inn did, in fact, attempt a rigid investigation into the conduct of the parties in question; but as to how far it was carried, or in what it resulted, not only the general public and the legal profession, but even the members of the inns of court remain in complete ignorance. The subject of the jurisdiction of the Inns of Court over their members has been recently revived in a manner which commands attention. The great secrecy with which certain proceedings affecting the professional position of at least one prominent member of the Common Law Bar has not prevented any person who feels the slightest interest in the subject from gaining no little information, more or less exact, about the nature of the issues raised in these investigations, the charges which have been made, and the evidence which has been adduced in support of them. But the decisions (if any) which have been arrived at by these anomalous tribunals are, as might have been expected, reported very variously; although assuming the jurisdiction to be competent and the rumours relating to the charges and evidence to be well founded, it is not easy to conceive how there can be much difficulty in arriving at a just and satisfactory conclusion. There is no denying the fact, however, that while solicitors are continually exposed to have their conduct canvassed in the public courts and animadverted upon with severity not only by censorious judges, but by advocates, some of whom have the slenderest pretensions to assume the guardianship of public morals, it is by no means impossible for members of the Bar to pursue for many years an unimpeached and successful course of practice, while it is matter of common notoriety that they have rendered themselves obnoxious to imputations which, so long as they remain unexplained, ought to be sufficient to place them outside the pale of respectable society. Yet so strangely inert are the governing bodies of the higher branch of the profession that nothing short of the greatest public scandal appears to have the least effect in putting them in motion against wrong-doers. This is no doubt partly owing to the jealousy in favour of personal independence which exists among all bodies of Englishmen; but in the case of the Bar it is to be attributed much more to the exceptional and inefficient character of the self-constituted tribunals for the determination of questions affecting the honour of its members, and also to the mysterious secrecy with which such proceedings are conducted. The time seems to have come, however, for the Bar to contrive some more active and efficient means than it now possesses for this purpose.

A Bill for amending the Laws relating to Attorneys and Solicitors in Ireland has passed through committee in the House of Commons. It contains provisions analogous to some of those relating to the admission of candidates which were enacted in the English Act of last session. It provides that persons who have taken degrees in Arts, or in the Faculty of Laws, at any of the universities in England or Ireland, or members of the Bar, may be admitted after three years' service. There is also a clause similar to the "ten years clerks' clause" in the English Act, and another which provides that no articled clerk—or "apprentice," as the term is used in Ireland—who has been a barrister, or a "ten years clerk" (in the latter case, where he has served at least two years in a Dublin office), shall be required to attend lectures or keep terms in Dublin during his apprenticeship.

It is said that already applications for silk gowns have been made to the present Lord Chancellor by some of the leading juniors of the Chancery bar; but that his lordship has notified that it is not his intention at present to increase the number of her Majesty's Counsel. It is not unlikely, however, that on account of the prominent position and large business of the gentlemen who are said to have applied for promotion, that their names will be included in the next list of Queen's Counsel. We have not heard that any applications from the common law bar have yet been made.

LAWYERS FOR CORONERS.

Our attention has been called to a vigorous contest which is now going on for the coronership of the south-eastern division of Somersetshire. The vacancy has been caused by the death of Mr. Ashford, a solicitor, who was the last coroner for the division; and there are now several candidates in the field. The fight really lies between two of them—Mr. Watts, a solicitor, of Yeovil, and Mr. Wybrants, a medical practitioner, residing at Shepton Mallett. It is not our habit to interfere in such contests, or in the management of local affairs, except so far as they may involve topics of professional interest; and if, in the present case, the question merely affected the personal character, or the interests of the candidates, we should abstain from touching it. But the last number of the *Lancet* newspaper, in a short article enforcing the claim of Mr. Wybrants, appeals in his favour for the strenuous support of the medical practitioners of that division; and we therefore consider ourselves bound, as the organ of solicitors throughout the country, to offer some observations upon the duties and requirements of the office of coroner, with a view of showing that the pretensions which the *Lancet* suggests on behalf of the medical body over those of lawyers, are altogether unfounded.

The office of coroner is one of the most ancient of our institutions, and any freeholder having land in the county "sufficient to answer all people," is capable of being elected, unless he be a common trader, or occupied in some business which is incompatible with the duties of such office. There is no doubt, therefore, that the freeholders may elect a medical practitioner, or almost any other respectable man residing in the district, who does not lie under some special incapacity. We do not attempt to deny the perfect right of medical men to offer themselves, and if possible to obtain their election, for the office of coroner. What we say is, that their professional avocations and experience do not render them so fit as practising lawyers to discharge the duties of the office. These duties are partly ministerial and partly judicial. Some of them, however, and especially those of the former character, are fast becoming historical, and have little occasion or interest in the present day. We do not now often hear of inquisitions of treasure trove, of wrecks of the sea, or of sturgeons or whales; yet the ministerial functions of a coroner are not, at least in theory, entirely obsolete. The coroner may any day be called upon, in case of disability on the part of the sheriff, to execute the Queen's writs; and it appears, also, that he may sometimes have to pronounce judgment of outlawry. We admit that these duties are of little practical importance compared with those that belong to the judicial part of the office, by which he is required to hold inquests on the bodies of persons dying by violence, or in cases of sudden death under circumstances of suspicion, and to prepare and make return of his inquisitions, as well as to apprehend persons charged with murder or manslaughter, and to bind over according to law prosecutors and witnesses. At first sight, and also, we think, after the best consideration, an unprejudiced person can hardly fail to be struck with the important character of these judicial duties. A coroner's inquest is frequently a preliminary trial for murder. The evidence there adduced affects not only the verdict to be given on that occasion, but indirectly—by the impressions which it makes on the public mind—the verdict of the jury upon the arraignment, and the ultimate fate of the person charged. It is, therefore, but common justice to the parties whose reputations and lives are liable to be thus put in jeopardy, that the judge presiding in the coroner's court should at least have some acquaintance with the rules of evidence, and with the proceedings of courts of justice; and it is hardly necessary to insist that we cannot expect this from men whose lives are devoted to the study and practice of medicine.

The accused, moreover, are not the only persons interested in securing for our coronerships competent judicial officers. The public have a deeper interest in this matter. An inquest is one of our most constitutional, and ought to be the most effective, of all the agencies for the detection of crime which exist in this country. We have not, as some continental countries have, a ramified system of officialism for inquiring into cases of death under suspicious circumstances, nor have we, as they have in Scotland, a number of procurators-fiscal, whose duty is to institute secret and *ex parte* inquiries into such cases. Our only direct agency is the coroner's inquest; and upon that the public is obliged to rely for the discovery of guilt as well as for the protection of innocence. An ignorant or inapt person presiding in this court, may, by his unskilfulness, not only unintentionally cause the escape of the guilty, but the accusation of the innocent. Indeed, in this respect, unless we are to have competent lawyers for our coroners, common justice suggests a preference for the Scotch system of secret inquiry. At all events it requires hardly more than a mere statement of the duties of the coronership to be convinced that they ought not to be assumed by persons who are untrained in judicial business, and in the law of evidence. A medical practitioner might, no doubt, be expected upon a view of the corpse to account for the death more satisfactorily than a person who had no acquaintance with the practice of physic. But in every such case the doctor's opinion should be given as matter of evidence and not as a judicial dictum. It is for the jury to decide what weight it will give to the medical testimony when considered in the light of all the other evidence; and it is manifestly undesirable that the person whose duty it is to act as a judge should be exposed to the temptation of maintaining any pet hypotheses of his own which may have the effect of coercing the decision of the jury, who are the only constitutional judges of the facts.

It ought not to be forgotten that in another division of the county of Somerset, there recently occurred a memorable instance illustrating the importance to the public interests of having in every coroner a person competent to conduct, after something like a judicial manner, an inquiry into cases of death under suspicious circumstances. In the famous Road Murder Case the coroner, if we mistake not, was a medical practitioner, who of course cannot be supposed to have had much experience in the conduct of cases involving voluminous and complicated evidence. It is no wonder then that the inquest over which he presided, in that remarkable case, and the mode in which it was conducted generally, should have given rise to great dissatisfaction throughout the country. Indeed, it would have been a marvel if the fact were otherwise. But the country will have made little use of the important lesson which it received in the Road Case, if in future more care than hitherto is not shewn, by the selection, for the office of coroner of persons competent to discharge judicial functions and acquainted with the procedure of Courts of Justice.

ON THE LAW OF TRADE MARKS.

No. VI.

(By EDWARD LLOYD, Esq., Barrister-at-law.)

Of the Nature and Classification of Trade Marks.

I have thought it more convenient to defer the consideration and definition of the nature of a trade-mark, until I had discussed the general principles on which it has been protected, because the word itself gave a very good notion of what sort of cases we should have to consider. There are, however, distinct from what may be looked on as trade-marks proper, two species of property which have been protected in the Court of Equity on principles analogous to those on which the decisions

in the former class of cases rest: these are the goodwill of a trade so far as it is contained in the style and title of a partnership, or the name of a trader, or the description of his place of business; and property in a name or distinguishing style, as connected with a literary publication or a work of art.

These two classes of cases it is my intention to consider before taking a survey in order of time of those relating to trade-marks properly so called; they are branches, and of some importance too, of the same subject, and as such, the principles which we find laid down in them are most valuable in leading us to those which support the decisions on the main head. There is another class of cases too which must not be entirely omitted from consideration, I mean those in which the interference of the Court has been grounded on the general doctrine of the prevention of damage arising from a breach of trust or confidence.

By this method of classification I hope to be able to include most of those cases which remain to be considered, under some general head. It seems to me, however, that there would be much convenience in having a statutory definition of a trade-mark, which should distinguish, as is done by the French law, between the different classes of cases—between the *marques de fabriques* or trade-marks properly so called, consisting of a stamp affixed to or incorporated with a manufactured article, and the use of a name, or label, or a sign-board, or placard, and all those less permanent marks of distinction which are in use in trade; and again separating from them all cases which involve literary or industrial property.

In *Crutwell* v. *Lye*, 17 Ves. 335, the nature of a goodwill in a trade, and the extent to which it is protected, are fully illustrated. The good-will in that case consisted in certain premises in Bath and in Bristol, which were sold by the assignees in bankruptcy of one of the defendants, Edward Lye, who had for some years, together with his father, George Lye, carried on the business of a carrier from Bristol through Bath to London; the same parties having also a carrying business from Bristol through Salisbury and Warminster to London. At the sale, the whole of the premises of the Messrs. Lye, and their business as carriers from Bristol through Bath to London, and the good-will of that business, was sold in one lot to the plaintiffs; the carrying business from Bristol through Warminster and Salisbury being put up for sale separately, and eventually bought by friends of E. Lye, the defendant, who then set him up in that business. The question was, whether the defendant, according to the facts stated, was really carrying on his own trade and not the plaintiff's. There is no doubt that a person having sold a house and stock-in-trade is, in the absence of any special covenant, at liberty to set up a similar business, if he pleases, next door to his former shop,—that is merely a fair case of competition in trade; but he must not, under colour of chalking out a different course of trading, really carry on, for his own benefit, the trade of others. The good-will in this case was defined to be nothing more than the probability that the old customers would resort to the old place of business, and if that species of property was damaged by the fraudulent act of the defendant, that would give a right to relief; but it was considered by Lord Eldon that the facts were not sufficient to prove such a fraudulent design; he says that they "amount to no more than that the defendant asserts a right to set up this trade (the carrying business) *and has set it up as the like but not the same trade with that sold*, taking only those means that he had a right to take to improve it." The case of *Keen* v. *Harris* was also commented on and distinguished from the present, on the ground that there an injunction was granted to relieve against a breach of trust. In that case, the printer of the *Bath Chronicle* left to his widow the benefit of that newspaper, subject to a trust for bringing up her family; she formed an attachment for the foreman of the business, and allowed him the use of the old house and types to set up a rival paper under the same name.

The case of *Lewis* v. *Langdon*, 7 Sim. 421, goes further to illustrate the same notion of property in a partnership's name, as a species of goodwill, attached, not to the place of business, but to the name of a firm or of the trader. Accordingly, it was held by the Vice-Chancellor, that a surviving partner had, on the death of his co-partner, a right to carry on the business under the designation of the original firm; that the goodwill arising from the use of a particular designation was, during the partnership, the joint property of the partners, and became, on the death of one of them, the sole property of the survivor. His Honour, however, while granting the injunction, at the same time directed the plaintiff to bring his action-at-law.

Thus far we have been considering the general goodwill in trade appendant to a place or a person; but it seems to me that the advantage gained in the market by the use of a trade-mark is only a sort of special goodwill, having the same qualities as property, and entitled to the same species of protection. There is, perhaps, one distinction to be fairly drawn between the two classes of cases; that whereas in the latter we may have, as in *Millington* v. *Fox*, 3 My. & Cr. 338, the adoption of a trade-mark by unauthorised persons, without any intention to commit fraud, and still have such an adoption restrained in equity, it is difficult to conceive a case coming under the former head in which the goodwill, either personal or local, of a trader, could be otherwise than fraudulently impeached (supposing the title to it to be clear); and therefore it might seem that in such cases the jurisdiction is founded on fraud only. That, however, does not seem to be the ground upon which the Vice-Chancellor decided in *Lewis* v. *Langdon* (*vide sup.*), and I think that we may fairly look upon the goodwill in trade as a species of property, of a like nature with the quasi-property in a trade-mark.

There is another class of cases which appears to me to form the connecting link between those where a goodwill in trade has been protected, and the cases which I would venture to call those of trade marks proper. Those are when the advantages in the market (or goodwill) is due either to the name of the trader or trading firm, or to their place of business, or to both these causes combined, but not being as a goodwill allowed to rest merely *in nubibus*, is embodied in a label or wrapper and affixed to the article sold; this name is then called a trade-mark. *Croft* v. *Day*, 7 Beav. 84, is a very important case under this head. The trade-mark there consisted in the name of Day & Martin, and their address 97, High Holborn, with other devices on a printed label attached to the bottles of blacking made by the plaintiffs, the executors of the former firm of Day & Martin, and then carrying on the same business; this was so closely imitated by the defendant as to afford the fair presumption that he intended the public to be deceived into buying his blacking as and for that of the original firm. In his judgment in this case the Master of the Rolls observes that the act complained of was equivalent to a sale by the defendant of his goods as those of the plaintiffs; that two things were requisite for the accomplishment of this fraud. First, a general resemblance of the forms, words, symbols, and accompaniments, such as to mislead the public. And, secondly, a sufficient distinctive individuality was to be preserved, so as to procure for the person himself the benefit of that deception, which the general resemblance was calculated to produce. In *Burgess* v. *Burgess*, 3 De G. M. & G., it was held, on grounds which I shall examine hereafter, that no fraud was intended; that it was always a question of evidence as to the false representation, and that it was incumbent on the party applying for an injunction that there was such a sale of the defendant's goods by him as to induce

the public to conclude that these were those of the plaintiff. So, also, the cases of *Burgess* v. *Hills*, 20 Beav. 244, and *Burgess* v. *Hately*, Id. 249. What we see done in all these cases is, in short, that a trader, perceives that an article manufactured by a particular house of business and known in the market by a particular stamp or design is sought after and has acquired a peculiar value; this advantage in the market he endeavours to appropriate to himself by offering for sale a similar article, recommended to the purchaser by a like distinctive mark; what is this in fact but an attempt to appropriate the goodwill of his rival? The term goodwill is, however, applied to the general result arising from the use in trade of that which, when applied or annexed to a single article, is called a trade-mark.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF CHANCERY.

(Before the LORD CHANCELLOR.)

July 6.—*Dickason* v. *Foster*.—In this case, which was an appeal from a decision of the Master of the Rolls, the Lord Chancellor, in dismissing the appeal with costs, observed that unless in very exceptional cases he was of opinion that costs ought to follow the event; and also stated that he thought the discretion vested in the Court had in some instances been exercised injudiciously.

COURT OF COMMON PLEAS.—SECOND COURT.

(Sittings at Nisi Prius, before Mr. Justice WILLES and a Special Jury.

July 6.—In a case sent over from the other court for the purpose of taking a verdict by consent, some argument took place on the propriety of allowing the costs of a special jury. The plea was one almost imputing fraud, and it was urged that a similar plea was pleaded every day.

Mr. Justice WILLES.—All I can say is, that whenever I try a cause in which such a plea is pleaded without good reason, I shall always certify for a special jury against the defendant.

The plaintiff's counsel said, "It would be well that your Lordship's intimation should go forth to the world."

SUMMER ASSIZES.

NORTHERN CIRCUIT.—YORK.

July 9.—Mr. Baron WILDE opened the commission in this city to-day. It was stated that the cause list would be very heavy when made up, 21 special juries having been applied for.

OXFORD CIRCUIT.—OXFORD.

July 10.—Mr. Justice HILL and Mr. Justice KEATING opened the commission in this city to-day. The cause list contained eight causes, one being marked for a special jury.

NORFOLK CIRCUIT.—AYLESBURY.

July 11.—Mr. Justice ERLE opened the commission in this borough this morning. There were only three causes entered for trial.

THE NEW SOLICITOR-GENERAL.—Mr. Roundell Palmer is the second son of the late Rev. William Jocelyn Palmer, Rector of Mixbury, in Oxfordshire, by the youngest daughter of the late Rev. William Roundell, of Gladstone-house, in the county of York, and grandson of the late Mr. William Parker, of Nazing-park, in the county of Essex, and thus nephew of the late Mr. George Palmer, M.P. for South Essex, and also of the late Mr. John Horsley Palmer and of Sir Ralph Palmer, and cousin to Sir George Palmer, of Wanlip-hall, Leicestershire. Mr. Roundell Palmer was born in 1812, and married in 1848 the Lady Laura Waldegrave, second daughter of William, eighth Earl Waldegrave, by whom he has several children.

A vacancy has occurred in the office of deputy-keeper of her Majesty's records, by the death on Saturday last, at an advanced age, of Sir Peter Francis Palgrave.

It is stated that Sir Frederick Slade, Q.C., will be brought forward to contest the election of the Eastern Division of the county of Somerset, on the retirement of Sir W. Miles.

Parliament and Legislation.

HOUSE OF LORDS.

Thursday, July 11.

CONCENTRATION OF COURTS.

The LORD CHANCELLOR presented a petition in favour of the concentration of the Courts.

TRANSFER OF STOCKS AND ANNUITIES BILL.

This Bill went through committee.

HOUSE OF COMMONS.

Tuesday, July 9.

THE BANKRUPTCY BILL.

Mr. CRAWFORD asked whether it was the intention of the Government to proceed on Monday next with the consideration of the Lords' amendments in this Bill.

Lord JOHN RUSSELL replied he believed it was, but he was not positive.

SUPPLY—CIVIL SERVICE.

The following votes were agreed to:—

£32,395 for law charges, salaries, &c., including prosecutions relating to coin in the department of the Solicitor to the Treasury.

A sum to complete £167,000 for criminal prosecutions at assizes and quarter sessions.

A sum to complete £10,950 for the salaries and expenses of the Registrar and Marshal of the Court of Admiralty.

£6,176 for the salaries of the commissioners and other officers and the expenses of the Insolvent Debtors' Court.

£71,980 for the salaries of the registrars and officers and for the expenses of the Courts of Probate and Divorce and Matrimonial Causes.

A sum to complete £200,320 for the salaries and expenses of the county courts.

£3,342 for the salaries of the Lord-Advocate and Solicitor-General of Scotland.

£18,213 for the salaries and expenses of the officers of the Court of Session in Scotland.

£11,071 for salaries and expenses connected with the Court of Justiciary in Scotland.

£4,000 for criminal prosecutions under the authority of the Lord-Advocate.

£1,620 for the salaries and expenses of the legal branch of the Exchequer in Scotland.

£25,000 for the charges of the several sheriffs and stewards in Scotland, &c., who are not paid by salaries.

£18,935 for the salaries of such of the procurators fiscal as are not remunerated by fees.

Thursday, July 11.

CONSOLIDATION BILLS.—THE BANKRUPTCY, &C., BILL.

In answer to a question put by Mr. HADFIELD,

The ATTORNEY-GENERAL said the Offences against the Person Bill stood second in the orders of the day for Monday next, and it was proposed to report progress in supply between 11 and 12 o'clock, to give an opportunity of discussing the only clause in the Bill that remained to be considered. It was most important that no delay should take place, inasmuch as the further progress of the other Consolidation Bills in the other House was delayed, in consequence of this Bill not being sent forward. It was the intention of the Government to bring on the discussion of the Bankruptcy and Insolvency Bill on Thursday next.

SALMON AND TROUT FISHERIES.

The House went into committee on this Bill, and after a short discussion on some of them, the clauses were agreed to and the House resumed.

NEW MEMBER.

Mr. Roundell Palmer, Q.C., took the oaths and his seat on his election for the borough of Richmond, and was warmly congratulated by many of the members. The hon. and learned gentleman was introduced by Mr. Crawford and Mr. Brand.

PENDING MEASURES OF LEGISLATION.

The following Bill was introduced by the late Attorney-General, the present Lord Chancellor, and differs in some important respect from that introduced into the House of Lords by Lord St. Leonards, and which is also now in the House of Commons waiting for the second reading.

A BILL TO AMEND THE LAW IN RELATION TO THE WILLS AND DOMICILE OF BRITISH SUBJECTS DYING WHILST RESIDENT ABROAD, AND OF FOREIGN SUBJECTS DYING WHILST RESIDENT WITHIN HER MAJESTY'S DOMINIONS.

Whereas by reason of the present law of domicil the wills of British subjects dying whilst resident abroad are often defeated, and their personal property administered in a manner contrary to their expectations and belief; and it is desirable to amend such law, but the same cannot be effectually done without the consent and concurrence of foreign states: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by authority of the same, as follows:

1. Whenever her Majesty shall by convention with any foreign state agree that provisions to the effect of the enactments herein contained shall be applicable to the subjects of her Majesty and of such foreign state respectively, it shall be lawful for her Majesty by any order in council to direct and it is hereby enacted, that from and after the publication of such order in the *London Gazette* no British subject resident at the time of his or her death in the foreign country named in such order shall be deemed under any circumstances to have acquired a domicil in such country unless such British subject shall have been permanently resident in such country for one year immediately preceding his or her decease, and shal also have made and deposited in a public office of such foreign country (such office to be named in order in council) a declaration in writing of his or her intention to become domiciled in such foreign country, and every British subject dying resident in such foreign country, but without having so resided and made such declaration as aforesaid, shall be deemed for all purposes of testate or intestate succession as to moveables, to retain the domicil he or she possessed at the time of his or her going to reside in such foreign country as aforesaid.

2. After any such convention as aforesaid shall have been entered into by her Majesty with any foreign state, it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the *London Gazette* it shall be and is hereby enacted, that no subject of any such foreign country who at the time of his or her death shall be resident in any part of Great Britain or Ireland shall be deemed under any circumstances to have acquired a domicil therein, unless such foreign subject shall have been resident within Great Britain or Ireland for one year immediately preceding his or her decease, and shall also have signed, and deposited with her Majesty's Secretary of State for the Home Department, a declaration in writing of his or her desire to become and be domiciled in England, Scotland, or Ireland, and that the law of the place of such domicil shall regulate his or her moveable succession.

3. This Act shall not apply to any foreigners who may have obtained letters of naturalization in any part of her Majesty's dominions.

4. Whenever a convention shall be made between her Majesty and any foreign state, whereby her Majesty's consuls or vice-consuls in such foreign state shall receive the same or the like powers and authorities as are herein-after expressed, it shall be lawful for her Majesty by order in council to direct, and from and after the publication of such order in the *London Gazette* it shall be and is hereby enacted, that whenever any subject of such foreign state shall die within the dominions of her Majesty, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, it shall be lawful for the consul, vice-consul, or consular agent of such foreign state within that part of her Majesty's dominions where such foreign subject shall die, to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for and shall be entitled to obtain from the proper court letters of administration of the effects of such deceased person, limited in such manner and for such time as to such court shall seem fit.

Recent Decisions.

REAL PROPERTY AND CONVEYANCING.

PRIORITY OF INCUMBRANCES ON LAND IN MIDDLESEX AND GENERALLY.

Benham v. *Keane*, V. C. W., 9 W. R., 765.

This case decides a point of considerable importance as to priority of incumbrances upon land in Middlesex. A. had entered up judgment, and, on the passing of 1 & 2 Vict. c. 110, in 1838, he registered it in the Common Pleas. He duly re-registered it within successive periods of five years, but it was not registered in Middlesex until 1857. In 1846 B. entered up judgment and registered it in the Common Pleas and in Middlesex; but it was not re-registered in the Common Pleas until 1858. The first question which arose was whether, supposing B. gained priority by being the first to register in Middlesex, he lost that priority by omitting to re-register in the Common Pleas. By 3 & 4 Vict. c. 11, s. 4, it is enacted that all judgments registered under the provisions of 1 & 2 Vict. c. 110, shall, after five years from the date of entry, be void against lands, &c., as to creditors, unless a memorandum be again left at the Common Pleas Office within five years before the right of such creditors accrued. It was decided in *Beavan* v. *Lord Oxford* (6 D. M. & G. 492; s. c., 4 W. R. 112), that the effect of this provision is to deprive the judgment creditor who omits to re-register within five years of protection against subsequent creditors, but not to alter his position as to previous creditors. It followed from this that B.'s right against A. was not affected by his omission to re-register in the Common Pleas. The next and more difficult question was whether A. by his prior registration in the Common Pleas obtained such an interest in the property as could not be divested by B.'s prior registration in Middlesex, having regard to the allegation that B. had notice of A.'s judgment. It was attempted in argument to place B.'s judgment upon the same footing as if he had been a purchaser who had contracted with the debtor to buy the land. But Vice-Chancellor Wood held that the position of the judgment creditor was not intended to be varied by the 1 & 2 Vict. c. 110, s. 13, to the extent of turning a judgment, which was a proceeding *in invitum*, into a contract. "The conscience of the debtor was not affected in the same way as if he had contracted to sell; but rather the creditor got as good a charge as if he had contracted to purchase." Reference was made by his Honour, in illustration of this view, to the case of *Beavan* v. *Lord Oxford*, in its second stage (6 D. M. & G. 507; s.c. 4 W. R. 275), where it was decided that a judgment creditor is not a purchaser within the meaning of the statute 27 Eliz. c. 4, and further, that the statute 1 & 2 Vict. c. 110, s. 13, does not confer on the judgment creditor any right against a person claiming under a voluntary settlement previously made by the judgment debtor. It is, perhaps, rather difficult to trace the course of the argument of counsel which we have taken up. The object of it was to prepare the way for the application of the Middlesex Registry Act to the circumstances of the case. The question is, for the present, to be looked at irrespective of registration in the Common Pleas. The point to be considered is, whether B. could hold the interest which he had acquired in the land in the face of his having notice of the prior interest of A. It seems to have been the object of A.'s counsel, if we may so say, to elevate A. and to depress B. into the position, respectively, of purchasers. It was sought to establish that A.'s right was something more, and B.'s right something less, than the right as ordinarily understood of a judgment creditor. The object of this contention was to postpone B. on proof of the allegation that he had notice of A.'s interest in the land. It is laid down in Sugden's "Vendors and Purchasers," 13th ed. p. 599, that "a purchaser (of land in a register county) with notice of a prior unregistered incumbrance, is bound by it;" and further, that "a purchaser may in equity be bound by a judgment or a deed, although not registered." It was strenuously contended by A.'s counsel that the rule stated in these passages applied to a judgment creditor as much as to a purchaser; but Vice-Chancellor Wood said:—"With regard to a subsequent judgment-creditor (he was not speaking of a purchaser) he had come to the conclusion that the question of notice was wholly immaterial." The reason given by his Honour for this conclusion will explain the remark we made above, that A.'s counsel endeavoured, in his argument, to depress B into the position of a purchaser. "The whole doctrine," said his Honour, "of notice proceeds upon this, that when a man has created a charge affecting his estate, he himself is not at liberty to enter into a new contract

in derogation of that charge. The Court would not allow him to do a wrong: and if he could not do it himself, no one could help him to do it by engaging to part with money for his benefit, or to release him from difficulties, knowing that it was contrary to his duty to do the act proposed to be done." But this principle did not affect the judgment creditor, who was acting *in invitum*. "The conscience of a purchaser was affected by notice, through the medium of the person with whom he entered into the contract, but the conscience of the judgment creditor was not thus affected. He was not assisting his debtor, but simply stood upon his own rights."

Looking, now, to the Middlesex Registry Act, 7 Ann. c. 208, s. 18, we find that it enacts that no judgment shall affect or bind lands, but only from the time that a memorial shall be entered at the registry office. It has been decided in *Westbrook* v. *Blyth* (3 Ell. & B. 742) that the statute 1 & 2 Vict. c. 110, did not repeal the 7 Ann. c. 20; and, therefore, that a judgment registered in the Common Pleas would have the effect of a charge upon lands in Middlesex only from the time that the judgment had been also registered in the Middlesex registry. The notion of a personal equity affecting the judgment creditor on the ground of notice having been got rid of, the case last cited was decisive of the question, B. having registered his judgment in Middlesex in 1846 was preferred to A., who had not registered until 1857.

A further question arose upon the general law of registry between B., who had neglected until 1858 to re-register his judgment in the Common Pleas, and a mortgagee of a purchaser from the original debtor. We have seen that B.'s judgment was registered in the Common Pleas in 1846. In 1847 the debtor mortgaged to C., and in 1850 he conveyed the equity of redemption to him. In 1853, after the effect of B.'s registration was spent, C. mortgaged to D. It appeared that D. had notice of B.'s judgment. The counsel for D. relied upon the statute 3 & 4 Vict. c. 82, s. 2, which provides that no judgment shall affect lands "as to purchasers, mortgagees, or creditors," unless a memorandum shall have been left at the Common Pleas Office, any notice to any such purchaser, mortgagee, or creditor notwithstanding. This Act does not expressly refer to the 2 & 3 Vict. c. 11, requiring re-registry after five years; but the 18 & 19 Vict. c. 15, s. 5, has declared that it applies to the neglect of repeated as well as of original registration. Upon this question, whether a mortgagee of a purchaser from the judgment debtor was within the 3 & 4 Vict. c. 82, s. 2, Vice-Chancellor Wood held that the proper construction of the Act was, that whenever there was a judgment registered against any owner of the land, that judgment must be kept up by the creditor from five years to five years, if he wished to affect that land into whatsoever hands it passed. Nothing was said in the Act as to the person by whom the conveyance or mortgage was to be made; but the words were large enough to confer the benefit intended by the Act on all *bonâ fide* purchasers and mortgagees deriving titles from the judgment debtor. It was, therefore, held that B. must be postponed to D.

COMMON LAW.

PRACTICE—MISJOINDER OF PLAINTIFFS—23 & 24 VICT. C. 126, S. 19.

Bellingham v. *Clarke*, Q. B., 9 W. R. 667.

This was an attempt to make the provision in the Common Law Procedure Act, 1861, which enacts that "the joinder of too many plaintiffs shall not be fatal, but that every action may be brought in the name of all the persons in whom the legal right may be supposed to exist," subserve a purpose certainly never intended by the framers of that measure—namely, to abrogate the well-known and useful rule which forbids the joinder of two plaintiffs in one and the same action, one of whom appears by the declaration to claim in his own right, and the other in a representative character. Here the declaration was for money paid to the defendant's use by A. (one of the plaintiffs) and B. the testator of the other plaintiff, and it was successfully demurred to on the ground that both plaintiffs could not on the face of the record be entitled to recover; for if it was a joint debt, the right to sue thereon would have survived to A.; and, if otherwise, then A. should have sued for what he advanced in one action, and B. in another action should have sued as executor or administrator in respect of the residue.

LAW OF LIFE ASSURANCE—DEATH BY ACCIDENT.

Trew v. *The Railway Passengers Assurance Co.*, 9 W. R. 671.

In noticing some weeks ago the case of *Sinclair* v. *Maritime Passengers Assurance Co.**—in which it was held that a death in consequence of a "sun stroke" did not come within the meaning of the contingency provided against by the policy, of an injury to be sustained by the assured "from or by reason or in consequence of an *accident* to him happening," but rather resulted from a natural cause—that is to say, an inflammatory disease of the brain brought on by over exposure to the heat of the sun—it was remarked that the present case (in which judgment had been given by the Court of Exchequer in favour of the defendant) was, to a certain extent an authority against the claimants on the policy in the case then under discussion; for that in the judgments delivered by the Barons, there were observations used which tended to define and narrow the circumstances under which a death could be held to have happened by an accident. It is proper, therefore, to remark that the judgment of the Court of Exchequer, in that case, has now been reversed in error; but not on any ground which would have influenced the Court of Queen's Bench in their judgment, with respect to a death by sunstroke not being, in the intendment of the law, accidental.

LAW OF EVIDENCE—PRIVILEGE OF WITNESS NOT TO CRIMINATE HIMSELF.

Reg. v. *Boyes*, Q. B., 9 W. R. 690.

When noticing recently the case of *Fernandez*,† it was remarked that there was another question involved, though not mentioned in the judgment (which proceeded on other grounds) and that this was whether, when a witness is asked a question which he is unwilling to answer as tending to his crimination, he or the presiding judge is the person to decide whether it will have the apprehended effect; and that the Court of Exchequer intimated their opinion to be that the judge ought to decide; and this, notwithstanding certain *dicta* to the contrary to be found in *Fisher* v. *Ronalds*, 12 C.B. 765, and *Adams* v. *Lloyd*, 3 H. & N. 357. Shortly after this opinion was reported, the Court of Queen's Bench, in the present case, had occasion expressly to decide the point (which is one of very considerable interest and importance), and they have settled it as suggested in *re Fernandez*, which is obviously the most convenient solution for the purposes of justice; for if a witness's being obliged to answer is to depend on the view taken by himself, as to his own safety in consequence, an humane protection afforded to him by the law is likely enough to be often abused.

The present case, in the circumstances under which it arose, much resembled that of *Fernandez*. In both the proceeding was a prosecution for bribery, and in both a witness, in the exercise of the above privilege, objected to answer whether he had received a bribe from the defendant. In the case of *Fernandez*, the witness had obtained a certificate under 15 & 16 Vic. c. 57, purporting to protect him against all future pains and penalties in respect of his having received a bribe; but in the present case, on his objecting to answer, a pardon under the great seal was tendered to him, as a means of obviating the only danger which the witness could apprehend,—it being admitted that the only ground for the exercise of the privilege was, that in consequence of his self-crimination, some penal proceedings might, or might reasonably be expected to be instituted against him; and in both instances the ground on which the witness still persisted in refusing to answer, was that the document he was called upon to rely on as a sufficient protection, would not operate against an impeachment by the Commons in Parliament. In the case of *Fernandez*, it will be remembered that the witness persisting in his refusal, was committed to prison by the judge, and that with this sentence the Court of Queen's Bench refused to interfere. In the present case an arrangement was come to by the counsel engaged, and sanctioned by the judge, that the witness should answer the disputed question; subject to its being taken as evidence, only in the event of the same Court being of opinion that the tender and acceptance of the Queen's pardon destroyed the privilege. The Court, taking into consideration the shadowy nature of the risk of a parliamentary impeachment, held that the privilege was destroyed by the pardon, and consequently gave judgment for the Crown. But they went further than this, and gave a deliberate opinion as to the other point involved in the case, though scarcely required for the purpose of the judgment alone; and laid down the doctrine (in accordance with the ruling of Lord Wensleydale in *Osborne* v. *The London Dock Co.*, 10 Exch. 701) that to entitle a party called as a witness to the privilege of silence, the Court must see from the circumstances of the case, and the nature of the evidence the witness is called upon to give, that there is reason-

* Sup. p. 393. † Sup. p. 339.

able ground to apprehend danger to him from his being compelled to answer. And further, that a judge is bound to insist on a witness answering, unless he is satisfied that the answer will tend to put the witness in peril, that is, in a danger real and appreciable with reference to the ordinary operation of law in the ordinary course of things, and not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.

Correspondence.

DEVISE OF REAL ESTATE.

I should feel obliged by some of your readers favouring me with a reply to the following query:—

S. by will devises his real estate to "A. for her natural life, and at her decease I give the said premises to the children of H., to be equally divided amongst them." H. had several children, and all survived the testator. S. H., one of those children, dies in the lifetime of A., the tenant for life, and by will gives all his realty and personalty to his widow. *Q.* Does S. H. take an absolute vested interest as tenant in common in fee in his share so as to enable his widow to stand in the same place as S. H. would have done with the other children if he had survived the tenant for life, and take her share of the rents and proceeds of the estate when sold? J. N. C.

IRISH ANTE-UNION STATUTES.

In an article in the last number of the *Solicitors' Journal*, on a settlement case at Warwick Quarter Sessions, which involved a question of Irish marriage law, it is said:—"As English courts do not take judicial cognizance of Irish statutes passed before the union, which must, therefore, be proved to those courts as facts, an Irish barrister deposed," &c.

Any one who holds the opinion thus expressed must, it would seem, either overlook or disregard the Act 41 Geo. 3 (U. K.), c. 90, which enacts (s. 9) that the copy of the statutes of the Kingdom of Ireland, made by the Parliament of the same prior to the union, and printed and published by the printer duly authorised by his Majesty, or any of his royal predecessors, to print and publish the same, shall be received as conclusive evidence of the several statutes made by the Parliament of Ireland, prior to the union of the Kingdoms of Great Britain and Ireland, in all suits, actions, or prosecutions, in any court of civil or criminal jurisdiction in that part of the United Kingdom called Great Britain.

Lincoln's-inn, July 11, 1861. F. S. REILLY.

THE NEW PROBATE ORDER.

I see that it is assumed in an article in another law journal, that the New Order of the Court of Probate, which requires the district registrars to act as the solicitors of parties applying in person for probate or administration, applies to London as well as the country. It is obvious, however, that the writer of the article to which I allude, has never taken the trouble to read as much as the title of the General Order in question. If he had done so he might have learned that it relates only to "the District Registries of the Court of Probate." It is absurd, therefore, to speak of the order being only "of small effect in London." I hope that this blunder will not be adopted in any of the memorials to the Treasury which are now in course of signature.

E. W.

Foreign Tribunals and Jurisprudence.

FRENCH JURISPRUDENCE.

[By ALGERNON JONES, Esq., Advocate in the Imperial Court of Paris.]

EXECUTION OF ENGLISH JUDGMENTS IN FRANCE AGAINST FRENCH SUBJECTS.

Other decisions of the French courts upon the subject of my last article, (*ante*, p. 590), offering me an opportunity of returning to the same, I will here attempt to give your readers some further information with respect to the execution of foreign judgments in France. In my remarks upon the judgment of the Imperial Court of Paris, in the case of the British Screw Ship Company, I demurred to a *dictum* in that judgment with reference to a presumed right in a Frenchman to ignore an action brought by himself in a foreign country against a subject of that country, and to bring the same action *de novo* in France, by virtue of article 14 of the Code Napoleon, which enacts as follows:—"An alien, even though not resident in France, may be sued in the French courts to compel him to execute the engagements contracted by him in France in favour of a French subject; he may likewise be sued in the French tribunals for the engagements contracted by him in a foreign country in favour of a French subject." Now the question is, whether the French subject cannot lose this privilege. Some contend that he cannot— that it sticks to him *nolens volens*, whatever may have been his proceedings. Others, and I have shown that the weight of authority lies that way, maintain that he is estopped from claiming the privilege against his alien antagonist, whenever he has of his own free will waived the same, either by beginning, without any compulsion to take such a course, his suit against the alien in a foreign country, or by agreeing—to submit his suit to the jurisdiction of foreign judges; in which cases he would either be barred according to circumstances by *lis pendens* or *res judicata* in the first, or estopped by his own agreement in the second, from claiming his privilege under article 14.

An example of such an agreement occurs in the following case:—A Mr. Reid, by a charter-party made in London, freighted a steam vessel named the *Alice*, to the firm of Couillard & Fautrel, of Havre. The charter-party contained a clause to the following effect:—"Every difference which shall arise between the parties with reference to this charter-party shall be submitted to the arbitration of two persons selected respectively by each party. Such two persons shall have authority to join unto themselves a third, and the decision of the majority of the three arbitrators shall be final and binding upon both parties." Some time afterwards Couillard & Fautrel wished to break the contract, and in consequence arbitrators were named under the above clause; but their award was favourable to the validity of the charter-party, which was ordered to be carried out. Subsequently, and in consequence of this decision, another French firm, Allain & Co., subfreighted the *Alice* from Couillard & Fautrel with a clause endorsing the conditions of the original charter-party. However, Allain & Co. showed no disposition to further the carrying out of those conditions, for, notwithstanding the demands of the master of the *Alice*, of the name of Boaden, to that effect, they refused to insert in the bills of lading which they gave out such clauses as would insure the execution of the same. And on Boaden's insisting that the bills of lading should state that the conditions were to be the same as those embodied in the original charter-party, Allain & Co. brought an action against Couillard & Fautrel in the Tribunal of Rochefort, to cause the latter to compel Boaden to desist from his pretensions, and for damages; and the latter was summoned by Couillard & Fautrel to interplead in the action. They likewise brought another action against him in the same Court, as agent of Reid, the original freighter, to the same effect as that laid before and rejected by the London arbitrators, namely, to have the charter party made with Reid set aside. But Boaden demurred to the latter suit, on the ground that there had been *res judicata* by the arbitrators elected under the agreement in the charter party, and to the action of Allain and Co., by reason of their having adopted that same clause of the charter party, and being, therefore, estopped from bringing their action in any but the court instituted by the same. To this Allain Couillard & Fautrel replied that the clause in question was void in France, as being a *clause compromissoire*, or arbitration clause, wanting, in the ingredients required for the validity of the same by article 1006 of the code of French procedure, namely, the choice of the arbitrators, and the specification of the litigious matter. Couillard & Fautré added, with respect to the suit in which they ad compelled Boaden to interplead, that the interpleader must of necessity take place in the court where the original action was brought; that the venue of that brought by Allain & Co. against them was laid in the Tribunal of Rochefort, and that, therefore, Boaden could not demur to the jurisdiction of that court.

These views were adopted by the Tribunal of Rochefort, which accordingly declared its jurisdiction over the case. Its judgment, however, was reversed on appeal by the Imperial Court of Poictiers, the judgment or *arret* of which was in its turn assailed by a *pourvoi* or writ of error in the Court of Cassation. But the Court of Cassation confirmed the judgment

of the Court of Poictiers in an *arret*, which, after setting forth the facts of the case, lays down the law as follows:—"The Court.....on the first point: whereas, a French subject may waive this privilege of applying to the French Courts, granted to him by the article 14 of the Code Napoleon;—And the plaintiffs in cassation, have, by the charter party of the 13th February, 1858, signed in London, agreed to submit their differences to arbitrators, to be named in that city: whereas the plaintiffs contend that such clause is not to be taken into account as being an arbitration clause framed without regard to the article 1006 of the Code of Procedure, and that therefore the defendant cannot take his stand on the said clause to repudiate the jurisdiction of the courts of France; but whereas the plaintiffs have voluntarily executed the said clause by co-operating in the elections of the said arbitrators and entering before them into the differences having arisen between the said plaintiffs and Reid represented in the present suit by Boaden: whereas in reversing the judgment of the Court below, which had declared invalid the arbitration clause, the Court most properly abstained from expressing any opinion upon the validity of the said clause, a point which could not be mooted after the execution of the same by the parties. As to Allain & Co., whereas they hold their rights from Couillard & Fautrel, and therefore stand in the same position as their assignors: whereas furthermore it has been decided in fact by the court below that they had expressly accepted the conditions laid down by the charter-party of the 13th of February, 1858; whereas in denying the jurisdiction of the French courts on the ground of the judicial contract contained in the charter-party of the execution of that contract by Couillard & Fautrel, and of the acceptation of the conditions of the said charter by Allain & Co. . . . . The Court below has given sufficient and satisfactory motives for its decision.

"On the second point concerning the judgment in which Allain & Co. appear as principal plaintiffs. Whereas it has been decided in fact that the arbitration agreement contained in the original charter-party had been made binding on Allain & Co. as well as on Couillard & Fautrel: whereas if the articles 59 and 181 of the Code of Procedure enact that the judge of the original action shall be likewise that of the interpleader, that rule does not apply where, as in the case, an agreement binding upon the parties in either, has elected a special jurisdiction for the case: whereas, therefore, the Court below by deciding that Allain & Co., as well as the original charterers, were bound to submit to the jurisdiction agreed upon with the affreighter Reid, of whom Boaden is the agent, has violated no law, rejects the writs of error (*pourvois*)."

So much for the validity of an agreement by which a French subject gives up the protection of the article 14 of the Code Napoleon. All persons who have dealings with French subjects, and who would dislike to be involved in a suit in the French courts, will do well to take the hint.

The following is an instance where a Frenchman was considered as not having lost the privilege of the article 14 by having brought an action against an alien in a foreign court, because it had been done only under the pressure of necessity:—A French vessel named *Le Courrier des Indes*, belonging to M. De Beauveau Craon having suffered from stress of weather he took her into Manilla to refit, and made with the house of Jenny & Co., in that port, an agreement in some form or other by which they were to furnish him with the funds necessary to make the repairs. There was between them, however, some disagreement which caused De Beauveau Craon to sue Jenny & Co., in the Court of Binondo, on the ground of their not carrying out their agreement; but a judgment of the 18th July, 1853, not only rejected his suit, but sentenced him to pay certain sums to the defendants. This judgment was subsequently confirmed on appeal.

In the meanwhile De Beauveau had returned to France, and applied to his underwriters for the payment of the sums insured by them on his vessel. But this was prevented by attachments which Jenny & Co. had put into the hands of the underwriters for the amount given in their favour by the judgment in the action of De Beauveau against them at Binondo. This, however was resisted by De Beauveau, who revived before the tribunal of Havre, in which the venues were laid, the very same pleas which he had brought forward, and which had been rejected by the Court of Binondo. This Jenny & Co., therefore, demurred to, both on the pleas of the *res judicata*, in the judgment in the Court below; and *lis pendens* of the appeal in the Appellate Court, which had not at that moment been disposed of. The tribunal of Havre, however, ruled against Jenny & Co., and decided that Beauveau Craon was not barred from profiting of the privilege of the Article 14 of the Code Napoleon, and bringing his action against Jenny & Co. before the French Courts, although he had already himself opened and prosecuted the same to a final judgment in a foreign court, because such a course had not been optional in him, but a matter of necessity under the circumstances. Jenny & Co. appealed from this to the Court of Rouen; their appeal was rejected by a judgment of the 9th of February, 1859, grounded on the same reasons, and of which it is unnecessary to give the terms, but against which they brought a *pourvoi* or writ of error in the Court of Cassation, and upon which the judgment of the latter sufficiently epitomises the arguments on both sides. It runs as follows:—"The Court: whereas, by the terms of the Article 14 of the Code Napoleon, an alien may be sued in the French Courts by a Frenchman for engagements contracted with the latter in a foreign country; that the said enactment, founded on public policy, ceases to apply only when the French subject has waived the privilege granted to him by the same, and that such waiver has been free and voluntary; that such is not the case where a Frenchman has sued an alien before a foreign court in emergencies where the freedom of the person or the execution of urgent contracts are jeopardised, and that, under such circumstances, the French subject cannot be considered as having given up all right to claim the protection of the judges of his own country as soon as may be; that thence follows the duty for the French judges to look into the circumstances which have determined the French subject to bring his action in the foreign courts: whereas the judgment of the Court below affirms, as a proven fact, that it was not of his free and unconstrained will that de Beauveau Craon brought the action against Jenny & Co. in the Court of Manilla; that such is a *dictum* of fact upon which the judgment of the Court below is final, and is, besides, justified by the documents and facts of the cause; that, therefore, the defendant in the present suit having acted under the pressure of circumstances which, to a certain extent, deprived him of the freedom of his will, had the right to appeal to article 14 of the Code Napoleon on returning to France . . . rejects the writ of error."

This is in accordance with the principles and authorities quoted in my last.

THE CASE OF MIRES—FRENCH CRIMINAL LAW.

The well-known banker and speculator has just been tried in the Court of Correctional Police (Tribunal de Police Correctionnelle) for alleged misdemeanours and malpractices committed in the vast speculations which have given such a sudden rise to his fortunes. Is he, as he alleges, the victim of a plot hatched by his enemies and his rivals? It is not for me to decide. My purpose is not with the causes of the prosecution, but with the prosecution itself, by means of the incidents of which I will attempt to give to your readers some notion of the theory and practice of the French penal procedure and its peculiar defects, which are great. Many portions of the law of France deserve the highest admiration and might be and are imitated with advantage, and the *ensemble* of the fabric is highly symmetrical and commodious; but the criminal law is certainly not among the portions which deserve such an eulogium. It requires no information but that derived from its spirit to discover at what time it was contrived. The power given to the machinery of the prosecution, the continual sacrifice which is made to the general interest, of the private interest of the accused (as if that also did not involve a great general interest) sufficiently prove that it was not brought forth at a time when France was much troubled with liberty; but when, on the contrary, it was laid under the protection of a strong government, which was well aware of the advantage of having a powerful hold of the sword of justice. But the Code d'Instruction Criminelle or Code of Criminal Procedure, and the Code Penal or Code of Penalties, were promulgated in the full bloom of the first empire, and they bear the undeniable stamp of the times under which they were born. Inasmuch as the best way to give an idea of the principle of a machine is to set it working, I cannot do better than display the spirit of the Code d'Instruction Criminelle by showing it in full operation in the prosecution of M. Mirès. As is well known he is, or rather was, a wealthy banker. Many of the largest and boldest financial undertakings of the day were promoted by him. Most of these he had formed for the benefit and through the instrumentality of the *caisse des chemins de fer*, which he had established with the view of furthering great financial undertakings. This *caisse des chemins de fer* was a company *en commandite*, the capital of which had been progressively raised to the large sum of two million sterling, and to make its speculations more successful he had pur-

chased for the same a financial paper—the *Journal des Chemins de Fer* and two political papers, the *Pays* and the *Constitutionnel*. With these he was enabled to operate most powerfully on the market, and had succeeded in compassing undertakings which seemed impossible to any but coalitions of the largest capitalists, and in bringing them to a considerable pitch of prosperity; but, as usual, the greater the success, the greater the amount of enmity he excited. To this he attributes his fall. However, whether from the hostile combinations of envy, or the reverses of speculation, he was, at a certain period, driven to straits which gave a hold upon him to his enemies. Of these, the most active and the most interested was a certain Baron de Pontalba, who was member of the council of surveillance of the Caisse des Chemins de Fer, and some of the satellite undertakings which gravitated around the same. The opportunities he had in these various functions allowed him to collect information as to certain transactions of Mirés which bore a suspicious appearance, and he determined to use this information for his own benefit. Some time previously, in his capacity of member of the Council of Surveillance, he had been deputed by Mirés to go to Marseilles and to Rome to settle certain difficulties which had arisen in the way of the company of the port of Marseilles and that of the Roman railroad. This was a portion of his duty in his official capacity. He demanded, however, £20,000 for going to Marseilles, and £48,000 for arranging matters at Rome, where he had, he alleged, been obliged to negotiate fork in hand. Dinners seem to be as favourable to business in the financial as in the diplomatic world. Mirés having demurred to the claim, M. de Pontalba's vindictive feelings seem to have been roused, and he threatened Mirés both with a civil and a criminal prosecution, on the ground of the facts he had discovered, and which he expresed himself ready to reveal. Mirés having refused with considerable, but, as it turned out, ill-omened spirit, to succumb to these demands, for the certainly somewhat plausible reasons that they were exorbitant, when it was M. de Pontalba's duty, as member of the Council of Surveillance, to give service gratuitously; and that as to the complaints against him, if there were any, it was the member of the Council of Supervision's duty to have made them before he was prompted to do so by such interested motives. M. de Pontalba then realised his threats, and in consequence of his accusations, the seals were put by the juge d'instruction on the books and offices of Mirés. This alarmed the latter, who felt immediately, alive to the ruinous consequences a criminal prosecution would have to himself, and all the interests under his direction, and supposing, for what reason does not appear, that notwithstanding the rule of French law which prevents any compounding with private parties having the effect of staying the public prosecutor, he consented to compromise with M. de Pontalba, and paid him £56,000.

This payment took place on the 18th of December, and the seals were taken the next day from the books of Mirés. But this was only a momentary lull in the storm. The 15th and 16th of February we find his books seized again. The 17th he is arrested. Mirés is fairly in the hands of the prosecution, and we are now going to see it at work.

The prosecution in France is in all except a very limited number of cases *ex officio*. Private parties may put it into motion by complaints or indictments, and co-operate with it, in the view to obtain damages; but the suing out of the application to the delinquent of the penalties of the law belongs only to a peculiar institution called the *Ministère Public*, or public ministry. As the name sufficiently shows it is established for the purpose of protecting the *public* interest. There sits, in every civil court, a member of the public ministry, whose duty is to watch the proceedings, and interfere in all such as are likely to interest public order, policy, or those private interests the protection of which the law considers as of public importance. There, however, the *Ministère Public* is only an adjunct to the cause; whereas, in all penal jurisdictions, he sits as the prosecuting party. The chief of the *Ministère Public* within the jurisdiction of each imperial court or court of appeal is the *Procureur*, or Attorney-General. He has advocates-general and substitutes, who represent him in the Imperial Court and in the various tribunals of first instance within the jurisdiction of that court. The Procureur-Imperial, or imperial attorney, with his substitutes, all of whom act not in their personal capacity, but under the direction and responsibility of the Procureur-General, who is *par excellence* the Ministere-public, and of whom they are only so many proxies. The prosecution, as a rule, is begun in the tribunal of first instance; and, therefore, by the Procureur-Imperial, or one of his substitutes; and the first step thereof is a *requisitoire*, or requisition, of the ministere-public to the juge d'instruction to *instruire*, or investigate, the case, and collect the evidence. The juge d'instruction is a judge of the tribunal of first instance, who is chosen by the minister of justice to fulfil those functions. He is named for a period of three years, but remains in office till another is named, which will not very soon happen if he gives satisfaction. His duties, though in many respects unenviable, are generally cheerfully accepted, because they give the nominee a greater chance of displaying his activity and zeal than mere judicial functions, and offer him, therefore, a greater chance of promotion. He is the examining magistrate, but unfortunately he is not that alone. His duties are, to a certain extent, inquisitorial. He it is who *collects* the evidence and makes up the case. In theory he is supposed to do nothing without being prompted thereto by the prosecutor; but in practice, if I may use the expression, as soon as his steam has been put up by the first requisitions of the Ministere-Public, he goes on investigating the case; and when he has hunted down what he considers the truth, he communicates the minutes of the evidence and the other documents to the public prosecutor, who makes his requisitions as to there being a true bill or no bill against the accused, and the *juge d'instruction* either discharges him, or, to use English phraseology, finds a true bill against him; and according as the charge bears the character of a misdemeanour or a felony (*délit* or crime), he commits him for trial to the Correctional Tribunal (a section of that of first instance), or makes his report to the Chamber of Accusation of the Imperial Court, which, if it agrees with the conclusion of the report, and if the public prosecutor in that chamber, takes requisition to that effect, and decides that the prisoner shall be arraigned in the Court of Assizes. Now, let us pause and reflect upon the attributes of the *juge d'instruction*. He it is who in reality makes up the whole case. He it is who interrogates the prisoner, who summons and interrogates the witnesses, who preserves the various physical elements which constitute the *corpus delicti*, or the vestiges by which it is to be traced. How will he fulfil these delicate duties? conscientiously, no doubt! He will use his strongest efforts to discover the truth—to open an equally willing mind to the arguments in favour of the accusation and the defence. But will not there be, or may not there be, a moment when an opinion is in process of formation in the judge's mind? And what if that be unfavourable to the prisoner? No doubt the judge will do his best to be unbiassed; but will he always succeed? Will not these elements of evidence, of which he is the sole collector, little by little be warped and moulded according to the bent taken by his mind? And what will that bent habitually be? No deep cogitation is necessary to answer that question. His duty is to find out guilt where it is; and the first desideratum to find it is of course to suspect it; to thrust in every direction, to probe everything with the glance of suspicion. Suspicion must, therefore, be the chronic condition of a *juge d'instruction's* mind. When, therefore, a prisoner comes before him with resolute denials, and a firm and well-connected defence, is it very unreasonable to suppose that there may arise in him that spirit of angry contention with which one is prompted to meet clever deceit? And to judge how dangerous the consequences to the prisoner, if such a spirit should arise in the examining magistrate, let us take a glance at his proceedings, and follow him into his little office in the *Palais de Justice*, where he sits, day by day, industriously weaving the web of the prosecution. There he sits, together with his *greffier*, or clerk; and the prisoner just taken out for the purpose from the solitude of secret confinement, from the prison where, ignorant, not only of what may concern his case, but the fate of his dearest relations, he has not been allowed to communicate either with them or with his counsel, and where, therefore, he has lived a prey to an anxiety which must leave him but little nerve for any contest. And in that state, alone—for all the part of the investigation is secret, and no assistance or counsel is allowed to reach the prisoner—he must confront a cool and able man of business, clothed in all the majesty of dread authority, who can at his leisure well plunge into and deliver him from the secret, and who plies him with such questions as his practised intellect may devise. And the clerk is there who takes down every answer of the prisoner. Not a shorthand-writer, mind, but a man who may not have a first-class capacity or education, and who has to condense in his minutes the substance of the dialogue which takes place before him. It is true that the prisoner has to sign the minutes, and may decline to do so should he consider them incorrect; but if he be an illiterate man, ignorant of the value of words, or a timid one, overawed by the dignity of a magistrate upon whom his fate appears so entirely

to depend, is it likely that he will presume to contend with him about niceties of expression? And yet from those minutes will be drawn the report of the judge, and the act of accusation or statement of the case for the Crown, by which the case will be opened in the assizes, and from which the first impressions of the jury will be drawn. In the same way will things go with the witness, and with the difference that they are not in prison. The high honour and capacity of the judges will, no doubt, prompt them to set everything right; but it suffices that such consequence should be within the range of possibility to condemn so dangerous a system. More especially as the current is so strong that it may unconsciously carry the magistrate along with it, and in this very case there is a striking example of this.

Mirés being accused of fraudulent transactions, it was of course necessary to investigate his books, in which the true nature of these transactions would appear, and Mirés being involved in the most enormous and intricate transactions which he himself conducted, it would be a matter of considerable difficulty to extract the truth therefrom. Anybody who has ever had anything do do with commercial cases can easily understand that. It was, therefore, necessary to employ professional book-keepers as experts. Who names these experts? Are they jointly named by the prosecution and the defence, since the latter is quite as interested as the former in the investigation? No, they are named by the juge d'instruction alone. Are they at least commissioned, since they are as it were the eyes of justice in this matter, to look impartially at both sides of the question, and collect without distinction such materials as may furnish evidence to either side? Let us read the commission which is issued to them by the judge, and that will inform us. It runs as nearly as possible literally as follows:—"We order that by Isoard, inspector of finances, Van Himbeek and Monginot, experts in book-keeping, after they shall have taken an oath at our hands, examination shall be made of all the books, documents, and papers which shall be put at their disposal, for the purpose of discovering the proof of the facts aforesaid, as well as of all such of which the accused may have been guilty, and which are of a nature to come under the penal law, and authorizes the experts to get all the necessary information from all such persons as may be able to furnish it." I have neither time nor space to comment upon the document, nor will it be necessary, especially to lawyers. I will only say, if the expert be not a man of intelligence and fair feeling, or if he be desirous of propitiating the juge d'instruction (not that I mean to insinuate such was the case in the present instance), for the purpose of obtaining further employment by chiming in with what he may have discovered to be his bias, what will not be the danger of the prisoners? That the counsel for the defence were not satisfied with the way the experts had done their duty in this case is clear; for they, as well as the prisoner himself, accused them in the strongest language of having exhibited as guilty transactions which would shine forth with the fullest innocence, if they had been but fully displayed; and when we recollect that the experts, with the books at their fullest and exclusive disposal, had been months in building up their report, and that the defence had only a few days to go through this vast work and prove it in all its parts, what must not have been their feeling as to its discovery? When I say that the defence had a few days, I think they had about a fortnight, for which they applied; a request in which the substitute of the procureur imperial, M. Senart, who prosecuted in this case in the courts (and who, to do him justice, acted in this case in a most fair and honourable manner) most heartily joined. But this very application was the source of the discovery of a strange arrangement, or at least omission, of the French law on a most important point. The counsel for Mirés, on applying for time to examine his books, and compare them with the report, demanded likewise that Mirés should be taken out of prison, and taken to his office under safe custody, to give him the opportunity of furnishing his counsel with the necessary documents and explanations. This one would think reasonable request met with considerable difficulty; and here comes the peculiarity. The Court declared that they had not power to direct these measures, and that they, as well as the production of the books, must be allowed by the ministere public. The law of this decision I believe questionable; but does it not seem strange that there should be a doubt whether the defence is not to depend upon the prosecution, the adverse side for the weapons with which it is to meet it; and that the Court should have no authority to order a proper dispensation of the same, should the prosecution be backward or niggardly therein? However, in this case, the prosecutor was by no means so; but, on the contrary, as liberal as he could well be, but it is a strange and unreasonable thing that the defence should be dependent upon his courtesy for the exercise of its most sacred rights.

But to return to the proceedings of the prosecutor. After the investigations, the juge d'instruction having discovered no felony in the transactions of Mirés (he had been originally suspected of forgery), decrees upon the requisition of the ministère public that Mirés shall be arraigned in the tribunal of correctional police. A citation is notified to him accordingly, and he prepares to appear before his judges. Nearly five months have elapsed since the prison doors have closed upon him: he has frequently, during that time, complained of harsh treatment, unjustly, I believe, though the prison discipline might well appear irksome and harsh to one of his habits, activity and situation. He has likewise complained of his imprisonment as unusually long. Alas! that complaint likewise is ungrounded. The length of the preliminary confinements to which he has been subjected is by no means unusual, and that is one of the greatest hardships arising out of the French criminal practice, and which it has been frequently, but as yet vainly been attempted to remedy.

I have little more to add. As to the particulars of the trial, they are all in the papers. The president proceeded according to the usual practice to interrogate the prisoner and the witnesses conducting the case, and doing what is in England the province of the counsel on both sides; after which exciting work, he of course had to settle down into the calm frame of mind of the judge to pass on Mirés the sentence of five years' imprisonment, the highest penalty of the law for the offence. The only member of the Council of Surveillance who has been condemned is Count Simeon, as civilly responsible for the damages to the aggrieved parties. Mirés will no doubt appeal, as he cannot fare worse, M. do Pontalba has been acquitted from all responsibility.

TRIBUNAL OF COMMERCE.

The installation of the newly-elected judges of the Tribunal of Commerce took place on the 6th inst., with the usual formalities, and M. Deniere, the President, delivered an address, in which he gave an account of the business of the Tribunal during the year, from the 1st of July, 1860, to the 30th of June, 1861. The following are the principal points in his statement:—The number of new causes inscribed was 67,693, and on adding those standing over from the preceding year the total to be heard was 68,558. Of that number 41,442 were decided by default, 20,134 after hearing the parties, 3,713 were withdrawn, in 2,349 arrangements were made, and the rest remain to be judged. The 68,558 were 3,140 more than in the preceding year. The number of appeals from decisions of the tribunal presented to the Imperial Court was 824, and that standing over from the preceding year 653. The total to be decided was, consequently, 1,477, and in 417 cases the judgments of the Tribunal were confirmed, in 186 they were quashed, in 207 the parties came to an arrangement, and the rest remain to be heard. The number of appeals from decisions of the Council of Prud'hommes presented to the Tribunal was 71, and in 31 the decisions were confirmed, in 18 set aside, in 17 the parties came to an arrangement, and the remainder are to be disposed of. The number of bankruptcies declared was 1,296 and those standing over from the preceding year 1,253. The total was, consequently, 2,549, in 1,378 of which the proceedings have been brought to a close. Of the bankruptcies terminated, 512 were arranged by composition between debtors and creditors, the dividend given being in twelve cases from 5 to 10 per cent., in 65 from 10 to 20, in 151 from 20 to 30, in 75 cases from 30 to 40, in 57 from 40 to 50, in 23 from 50 to 60, in 13 from 60 to 80, and in 28 the whole capital was paid. In 136 cases there were no assets at all. The credits of the bankruptcies open at the end of the year amounted to 8,937,365f., and of that sum 889,992f. were deposited in the Caisse des Consignations. The amount ordered to be paid to creditors in the course of the year was 8,503,843f. The number of new companies in shares registered was 1,330, of which 1,027 were what is called *non collectif*, 291 *en commandite*, 12 *anonymes*. The total was 10 more than in the preceding year. The capital of the companies *en commandite* was on the 30th of June, 81,770,000f., and that declared in the companies in *nom collectif*, 17,576,000f.; that of the *anonymes* is not stated. In the preceding year that of the first was 117,000,000., and of the second 21,900,000f. Finally, the number of companies dissolved in the course of the year was 942. In the course of his address the President stated that the great failures in the leather trade

in London, and the diminution in trade with America, caused by the political crisis in that country, had produced bankruptcies in Paris. He also pointed to the decline in the capital of companies *en commandite* as a proof that the law of the 17th of July, 1856, on such associations does not work well; and he said that the adoption of the principles of English legislation on joint stock companies would be desirable.

Review.

A Treatise on Wills. By THOMAS JARMAN, Esq. The Third Edition. By E. P. WOLSTENHOLME, M.A., and S. VINCENT, B.A., of Lincoln's-inn, and the Inner Temple, Barristers-at-Law. H. Sweet, 3, Chancery-lane, London; Hodges & Smith, Dublin. 1861.

The first edition of Mr. Jarman's Treatise on Wills incorporated a large portion of the matter contained in his edition of "Powell on Devises," and in the 10th volume of the Bythewood series of "Precedents in Conveyancing," amplified by the judicial and legislative donations conferred upon this branch of law since the publication of those works, and enriched by the author's then more matured opinions. About one-half of the first edition consisted of completely new matter. The additions contained in the subsequent editions are, of course, of the same character, so that the work now before us comprises a large amount of original disquisition. The method of inserting the editorial additions within brackets, which was observed in the second edition, is continued in the present, being considered by the editors as more convenient than an arrangement of their contributions in notes or an appendix. Serjeant Stephen has so familiarised our early impressions with this method, that its inherent awkwardness at present escapes observation. It is not, however, a course which we desire to see generally adopted, and reminds us of a classic building, the needful repairs of which are unnecessarily notified by too fresh-looking bricks and mortar. The cases published since 1st February, 1861, are, in the present edition, noticed partly in the text and partly in the addenda.

It is not easy for the reader of Jarman on Wills to determine whether he should bestow his admiration more on the excellence of the general arrangement of that work, or on the philosophical method and the accuracy of its details. We shall best discharge our present duty by endeavouring to give a brief account of the general scope of this masterpiece of professional art.

The first chapter relates to the local laws of wills, and in the first place informs us that testamentary powers are regulated as to realty by the *lex loci rei sitæ*, and, as to personalty, by the *lex domicilii*; but that treaty may alter the latter rule. Thus, Englishmen domiciled in Turkey may, by treaty, dispose of their property, though subjects of the Porte cannot. The case of *Bremer* v. *Freeman*, 5 W. R. 618, which has suggested to Lord Kingsdown the propriety of facilitating international conventions contravening the *lex domicilii*, receives illustration from two cases cited in the first chapter of this treatise, *Collier* v. *Rivaz*, Curt. 85, and *Laneuville* v. *Anderson*, 17 Jur. 511, which decided, in different ways, the question of the mode of acquiring a French domicil. A will may be made contingent, and be written in pencilling, and with blank spaces. If an instrument is testamentary in its nature, its form as a deed, or even as a bill of exchange (2 Rob. 228), will not defeat its operation as a will, nor exempt its bequests from legacy duty. Probate has always been deemed conclusive as to the testamentary character of the instrument, though not of its validity. The third chapter, which relates to the personal disabilities of testators, is not intimately connected with the scientific exposition of the nature of testamentary instruments, and involves merely questions of status. The fourth chapter informs us that what may be inherited may be devised, and details the testamentary powers conferred by the Wills Act, 1 Vict. c. 26, over rights of entry or action, and after-acquired estates. When informed who cannot be devisees, we are indirectly told who can, according to the maxim "*exceptio probat regulam.*" Corporations, with the exception of a few collegiate bodies, cannot take real estate under a will. Aliens may take, but cannot retain; and so attesting witnesses, their wives or husbands, cannot take; but it has been held that a witness to a codicil may take under the will. The execution, revocation, and republication of wills, as also the rules of construction as settled by the 1st Vict., c. 26, are treated by the present editors with a minuteness of detail which leaves nothing to be desired on these points.

The rule against perpetuities, one of the great landmarks which distinguishes the conflicting claims of private and public right, has been treated by Mr. Jarman more briefly, but not in a less masterly manner, than the same subject is illustrated in Mr. Lewis's admirable treatise. A devise for hundreds of lives *in esse*, and twenty-one years after, is good; a devise for twenty-one years and one day, even without any limitation as to lives, is void; but a nominal postponement of the period of vesting for a great number of years, is valid, if the limitation be substantially in its terms within the line of perpetuity; *Lacklan* v. *Reynolds*, 9 Hare 796. This appears to us to countenance Lord St. Leonards' opinion stated in his edition of "Gilbert on Uses," that the exility of the interest devised, as, for instance, an estate *par autre vie*, will in all cases prevent the devise of such an interest from being too remote. For, though the actual occurrence of the period of vesting within the line of perpetuity will not effectuate a limitation that was originally invalid; yet, when a testator could not by possibility contemplate an evasion of the rule—the quantity of the interest devised not requiring or admitting of such—the policy of the rule appears inapplicable to such a case. A curious statement occurs in Mr. Fearne's treatise, viz., that a limitation engrafted upon an estate tail cannot be too remote. The editors of the present work seem disposed to dispute this position. We may suppose the case of a devise to A. in tail, and if A. have no son who shall attain twenty-seven years, remainder over, as Mr. Smith, the editor of Fearne's "Contingent Remainders," p. 522, ed. 1844, puts it, and that A. dies the day after the testator, and A's son is born the next day. Here the property is tied up for twenty-seven years—a period which the law will certainly in no case allow. In *Doe d. Winter* v. *Perratt*, decided by the House of Lords, 9 Cl. & Fin. 606, it was held that a remote contingent limitation after an estate tail was valid, not because it succeeded such an estate, but because it was a contingent remainder. Thus a devise of a reversion or of an executory interest may be too remote where a devise of a remainder would not, because the former are not dependant for their vesting or failure upon the determination of the former estate, and, therefore, require an express rule to prevent them, if too remote, from taking effect. These questions are very fully treated of in the present edition. In the case of *Jack* v. *Fetherstone*, 2 Huds. & Br. 320, Bushe, C. J. accurately distinguished *the limitation* from *the event*, the latter being immaterial in a question of remoteness. The statute 8 & 9 Vict., c. 106, which preserves contingent remainders from destruction in certain cases, does not affect the question of their remoteness. As a gift to a class, some members of which are beyond the line of perpetuity, invalidates the gift as to all, the editors of this treatise suggest that the vesting of personal property given in strict settlement should not be postponed until some one of the tenants in tail come of age; *Browne* v. *Stoughton*, 14 Sim. 369. The vesting should be deferred only until some tenant in tail *by purchase* attain that age. Alternative limitations are good or not according to the event; *Leake* v. *Robinson*, 2 Mer. 363. The *cy près* rule, which in some cases gives an estate tail to the first taker of realty, and thus preserves many limitations that otherwise would be void, is, in the present edition, properly commented on in full detail as a rule peculiar to wills. In the late case of *Bassil* v. *Lester*, 9 Hare 177, Sir G. Turner, V.C. held that the Thellusson Statute 39 & 40 Geo. 3, c. 98, did not apply to a direction in a will to apply a part of the income of the testator's property in keeping up policies of insurance, which he directed to be settled, upon his children's marriage, on their wives and children. The editors of this work consider that this case involves a direct sanction of a contravention of the statute. We are of the same opinion, and think, as they do, that the case of a partnership agreement, put by Sir George Turner, is not a case in point, as such contracts, even when intended to endure for many years, may be at any time rescinded, and, therefore, cannot infringe upon either the statutory or common law period; *Bateman* v. *Hotchkin*, 10 Beav. 426. The exceptions in the statute apply to provisions for the payment of debts or portions, and to directions touching the produce of timber.

The thirteenth chapter, which relates to the admissibility of parol evidence to help the construction of devises, is one of the most important in the treatise. Such evidence is excluded in cases of wills not only by the general rule of law applicable in this respect to all written documents, but still more by the Wills Acts, which expressly invalidate parol devises. Parties

claiming under defective instruments *inter vivos*, may have a parol variance enforced in equity. But devisees under a will cannot, even though they should be creditors of the testator, and would be aided in equity, as in the defective execution of a power by deed. Thus, neither the letters of a testator, nor the evidence of the person who drew the will, is admissible to prove a parol variance. A negative converse of the rule mentioned, however, has been established, so that a clause improperly introduced may be rejected; *Re Davey*, 1 Sw. & Tr. 262; 5 Jur. N. S. 252. This reminds one of the construction which the Statute of Frauds has received as to invalidating certain unwritten contracts and yet not validating any written ones which might be against equity. Parol evidence is admissible as to wills in cases of fraud, or to repel a resulting trust, and, consequently, then also to support such a trust; *Palmer* v. *Newell*, 20 Beav. 39. It can be also used to explain the circumstances in which the testator was placed at the date of his will. The present editors of the treatise before us have fully discussed the rule which asserts that parol evidence is admissible to explain latent, but not patent, ambiguities. They limit its application in all cases even of latent ambiguity to cases which require an identification of the subject or object of the disposition, and in which different gifts or devises would equally answer the description contained in the will. But this evidence is not admissible when a distinct ground of preferring a particular object is afforded by the will; *Douglas* v. *Fellows*, Kay 114; or by the circumstances of the testator; *Jeffries* v. *Michell*, 20 Beav. 15. If no part of the description applies to the claimant, he cannot adduce parol evidence of an intention on the part of the testator to designate him; *Miller* v. *Francis*, 8 Bing. 244. In *Beaumont* v. *Fell*, 2 P. W. 141, a legatee not corresponding either to the Christian or surname of the person mentioned in the will, and not otherwise described in it, was held entitled to the legacy. This case, however, was denied by Lord Brougham in *Mostyn* v. *Mostyn*, 5 H. of L. Cases, 168, to be law. The case of *Beaumont* v. *Fell* appears to have been decided on the ground of the names being used as nicknames. The decision is disapproved of by the editors, and, indeed, appears irreconcilable with any principles of interpretation applicable to a solemn written instrument. Parol evidence is inadmissable to show that a testator considered property to be his own which did not belong to him; in other words, cases of election under wills must arise from the construction of the instrument solely; *Seaman* v. *Woods*, 24 Beav. 381. The rules as to contradictory clauses, supplying and transposing words, recitals, and enlargement of gifts by implication, are in the present edition treated of in minute detail. The judicious advice is given of limiting an estate to preserve contingent remainders not during the life of the preceding taker, but during the period of the possible continuance of the contingency.

The chapter on conditions contains an elaborate analysis of this recondite branch of law. What by the old law was construed to be a devise upon condition would now, as a general rule, be construed a devise in fee upon trust. Instead of the heir taking advantage of the breach of condition, the *cestui que trust* can in such cases compel an observance of the trust; *Wright* v. *Wilkins*, 9 W. R. 161, Q. B.; 1 Sug. Pow. 122, 7th edit. With regard to personal estate, the civil law, which has been in this respect adopted by courts of equity, recognises no distinction between conditions precedent and subsequent, except that if the condition be *malum in se* it defeats the gift in all cases. The assimilation of the law of conditions in real and personal property appears to be a desideratum. An inalienable trust for maintenance is not permitted by the law of England; *In re Sanderson*, 3 Jur., N. S. 809; (though it is in Scotland), except in the case of a married woman. A prohibition against alienation within a limited period is valid both as to realty and personalty; see *Kiallmark* v. *Kiallmark*, 26 L. J., Ch. 1. Although property cannot be given exempt from the operation of bankruptcy, yet the interest of the donee may be made to cease on that event. Assignees in bankruptcy are entitled to the benefit even of a trust for the maintenance of the bankrupt, notwithstanding that the trustees have a discretion as to the mode in which the fund is to be applied. The case of *Twopeny* v. *Peyton*, 10 Sim. 487, which has tended to unsettle this rule, is, rightly we think, not considered by the editors of this treatise to have been decided on sound principles. Insolvency was, unlike bankruptcy, formerly considered a voluntary alienation. Since the passing of the Act 1 & 2 Vict. c. 110, s. 36, whereby a creditor may obtain a vesting order, insolvency appears no longer capable of being regarded as a voluntary act done by the debtor. How much the technical rules of law are suffered to conflict with the intention of testators is shown by the fact that a condition in partial restraint of marriage is void, unless there be a gift over; while a like restraining clause is good if worded in the form of a limitation as distinguished from a condition; *Heath* v. *Lewis*, 2 D. M. & G. 954; *West* v. *Kerr*, 6 Ir. Jur. 141. The diversity between our laws of real and of personal property is also shown by the rule that a condition that a legatee shall not dispute a will is invalid unless there be a gift over, while a like condition binds a devisee, even if there be limitation over; *Cooke* v. *Turner*, 15 M. & W. 727. Acceptance of a conditional gift under a will estops the donee from afterwards disputing his liability to the duty imposed by the condition, *Gregg* v. *Coates*, 23 Beav. 33.

The chapter on "The rule in Shelley's case," most lucidly distinguishes those cases in which the heir in tail takes by descent from those in which he takes by purchase, as regards lapse, dower, and curtesy, and the alienation of his ancestor by an enrolled conveyance. In *Doe d. Woodall* v. *Woodall*, 3 C. B. 349, the words "heirs of the body in manner aforesaid," were held to mean children. On the whole we think that the current of modern decisions inclines to narrow the technical meaning of words, when these are in any degree inconsistent with the context. Fearne appears to have leaned too much to strictness of construction as to devises. The words "in default of issue," reminds us of the *pons asinorum* of law students. The various cases which have settled the meaning of these words are noted in the treatise before us with a judicious and perspicuous method seldom attained in a work on so complicated a branch of law. The 29th section of the 1st Vict., c. 26, does not apply to cases where the words "die without issue" would previously to the Act have been held not to mean an indefinite failure of issue; *Morris* v. *Morris*, 17 Beav. 198. The effect of these words in raising cross-remainders by implication is strongly illustrated by the case of *Forrest* v. *Whiteway*, 3 Exch. 367. In that case estates in fee were cut down to estates tail with cross-remainders. The devise was to two sisters and their heirs and assigns for ever, but in case *both* should die without issue, then over. The Court of Exchequer held that the sisters were joint tenants for life, having several inheritances in tail, with cross-remainders between them in tail. Although the implication of cross-remainders is not affected by the limited meaning given to the word "issue" by the 1st Vict., c. 26, yet the whole line of limitations may by reason of that enactment be so altered as to preclude any question as to cross-remainders. This would have been the case in *Forrest* v. *Whiteway* if the will in that suit had been made since 1837; see *Stanhouse* v. *Gaskell*, 17 Jur. 157. Cross executory gifts cannot be implied in the case either of realty or personalty; and there is no distinction whether the prior gift be vested or contingent. Thus in the case of *Baxter* v. *Gosh*, 14 Beav. 612, the residue was bequeathed to be equally divided between A. and B., their executors, &c., absolutely for ever, and if A. and B. should neither of them be living at a particular period, then over; B. alone survived the period specified, and claimed that there was an implied gift to him of the share of A; but Sir John Romilly, M.R., held that the event not having happened in which the gift over was to take effect, the moiety of A. had lapsed. As to the annexing personal to real estate which is devised in strict settlement, in the cases of *Cox* v. *Sutton*, 25 L. J. Ch. 845, and *Lord Scarsdale* v. *Curzon*, both decided by Sir W. P. Wood, V.C., the words "entitled in possession," and "actual," were held to show that the testator intended a suspension of the vesting of the personalty, until some tenant in tail by purchase became of age, and that the representative of the first tenant in tail who had died in the lifetime of the tenant for life, was not entitled to the personalty, which should follow the devolution of the estates in settlement.

Where the executor is devisee of real estate, even in tail, a direction to him to pay debts or legacies has been held to cast them upon the realty so devised; *Clowdesley* v. *Pelham*, 1 Vern. 411. Recently it has been held that a similar direction will charge an estate devised to the executor only *for life*. *Harris* v. *Watkins*, Kay, pp. 438—447; *Cook* v. *Dawson*, 7 Jur. N. S. 130. Where a specific portion of personalty is subjected to certain charges, the general personalty is only subsidiary if the residue be disposed of; *Newbegin* v. *Bell*, 23 Beav. 368. The effect of the death of the object of a prior gift in the testator's lifetime upon ulterior legacies, has received some illustration in the case of *Ive* v. *King*, 16 Beav. pp. 53, 54, and the case of *Domville's Trust*, 22 L. J. Ch. 947, as to the distinction between such gifts to a class and to individuals. If the posterior gift fail by lapse, the title of the heir and since the passing of the 1st Vict., c. 26, that of the residuary devisee

is let in; but if the posterior gift fail in event, the first devisee holds the estate absolutely. *Jackson* v. *Noble*, 2 Keen 590; *Tarbuck* v. *Tarbuck*, 4 L. J. (N. S.), Ch. 129.

The reviewer of a treatise such as that of Jarman on wills has a pleasing duty to perform. The author has, according to the Horatian maxim, himself discharged all censorial functions; while in the subsequent editions we only find different degrees of excellence. The present edition contains 386 pages of new matter, comprising notices of all the more important cases which have tended to illustrate or develope testamentary law since the issuing of the second edition. It should be a source of pride to the profession to contemplate in this treatise the gifts of more than one acute mind to a most complicated branch of law, and the reduction of its varied details to a scientific order "Jarman on Wills" has long been an oracle both for the professional man and the law student. But although indicative of a master hand, it is, nevertheless, a treatise not so well adapted for the discipline of the law student, as "Fearne on Contingent Remainders," or "Lewis on Perpetuity." These works, however, develope only a single and very definite branch of law, and they therefore afford more scope for purely deductive reasoning, and greater facilities for forming a legal mind, than could well be furnished by a treatise such as the subject of this review, which has to investigate not only principles of testamentary construction, but also the incidental questions of personal capacity, and the marshalling and administration of assets. This treatise will prove of especial value to the practitioner, by whom it leaves nothing to be desired. Mr. Allnutt recommends in his book on Wills, p. 16, that instructions for wills should be duly executed by the testator, in order that, if necessary, they may be used instead of a formal instrument. The concise "Suggestions to persons taking instructions for wills" at the end of the present treatise comprise a series of simple but most valuable rules that should be strictly observed by all who discharge such important functions.

Societies and Institutions.

INCORPORATED LAW SOCIETY.

The annual general meeting of the members of this Society took place on Tuesday, July 2nd, at their hall, in Chancery-lane, London. The chair was taken by William Strickland Cookson, Esq., the President.

The minutes of the last general meeting having been read, the President stated the vacancies in the council, and the following gentlemen were elected:—Mr. Joseph Maynard, President; Mr. William Sharpe, Vice-President; and Mr. Edward Savage Bailey, Mr. Alfred Bell, Mr. John Henry Bolton, Mr. John Clayton, Mr. Bartle John Laurie Frere, Mr. Henry Lake, Mr. Joseph Maynard, Mr. William Murray, M.P., Mr. John Hope Shaw, and Mr. Edward White, as members of the council. Mr. Frederic Ouvry was also elected a member of the council in lieu of Mr. John Swarbreck Gregory, deceased. The following gentlemen were elected auditors of the accounts of the Society:—Mr. Charles Rose Lucas, Mr. William Henry Domville, and Mr. George Lee Pitteson.

The annual report of the council was then read by the secretary. It stated that in obedience to the charter of incorporation and the constitution and laws of the Society, it became the duty of the council to present their report for the year 1861, to trace the progress and indicate the present position of the society, and of the profession with which it is so intimately connected, and for whose benefit it was called into existence; to advert to the subjects which have occupied the attention of the council since the last annual meeting, to show that the council have endeavoured at least, if not always successfully, to further the legitimate objects and to protect the just rights of the body whose representatives they are, and to prove that they have not been wholly undeserving of the confidence which has been reposed in them,—a confidence which was indispensable to their usefulness.

The council observed that there is abundant cause for congratulation in the retrospect of the last few years. There is satisfactory evidence of a growing conviction among the members of the Government and the Legislature, that the profession, as a body, are deserving of confidence, and are judicious and disinterested promoters of law amendment, and are qualified, by their experience and legal information to render efficient service in the correction of old abuses. There is a marked improvement in the tone of the public mind with reference to the profession; vulgar and unjust prejudices are giving way to a more enlightened estimate of their value as members of the great social community; and year by year increasing numbers of well educated gentlemen, graduates of the universities and others, are entering the ranks of the profession.

These important and satisfactory changes the council considered to be in a great degree attributable to the existence and influence of this and other kindred law societies in London and the provinces, and to the cordial manner in which those societies co-operate with each other.

In obtaining the sanction of the Legislature to the important statute of last session for the amendment of the law of attorneys, arduous and pressing efforts were required, and though the Act, when it received the royal assent, was not entirely satisfactory on some minor points, the council confidently anticipate very beneficial results from its operation.

The report, which will be hereafter published, comprised the following subjects:—1. The amendment of the law of attorneys. 2. The statutes of the last and present session. 3. The Bills now before Parliament. 4. The concentration of the courts and offices. 5. The chancery evidence commission. 6. The chancery funds commission. 7. The usages of the profession. 8. The Probate Court, and the new regulations relating to the district registrars. 9. Unqualified practitioners. 10. Cases of malpractice. 11. Privilege of the bar with reference to attorneys. 12. The general affairs of the society—the state of its funds—its library—lectures, &c.

During the past year, 86 new members had been elected, and after deducting deaths and retirements, the present number was, of town members, 1,370; of country, 432; making in all 1802.

The report of the council was approved and ordered to be entered on the minutes.

The report of the auditors on the accounts of the society was also read and approved of.

The council were, by a resolution of the meeting, authorised to convene social meetings of the members in the evening in the hall and library, to procure for exhibition works of art, to invite visitors, and defray the expense out of the funds of the society.

It was also suggested that a fund should be raised for the enlargement of the library in the departments of foreign law, classics, and general literature.

The thanks of the meeting were then presented to the president, vice-president, and council, and to the secretary.

LAW AMENDMENT SOCIETY.

At a general meeting of this society, held on Monday, the 8th inst., a paper was read by Edward Zimmerman, Esq., LL.D., on the subject of INSURANCE. He stated that the precipitate withdrawal of the Bill lately brought into the House of Commons by Messrs. Sotheron Estcourt, Adderley, and Bonham Carter, to require all friendly and assurance societies to publish and distribute among members copies of their annual accounts, had been looked upon as a significant if not a suspicious fact. A large amount of capital was entrusted to the management of such companies, and the late Bill was founded on the obviously sound principle that a deposition should be furnished with some criteria for forming a judgment upon their position and prospects. The broad distinction, however, between assurance societies and joint-stock companies should not be forgotten. The present tendency was to obliterate, or at least to under-estimate that distinction. In exacting a statement of accounts, the one was entitled to greater indulgence than the other. Assurance companies undertook to indemnify depositors on the happening of certain contingencies, upon the principle established by a wide and careful comparison of statistics, that the returns of one year, or a certain number of years, would more than compensate for the disbursements of other years. All that could be fairly expected was a periodical general statement of their assets and liabilities. Sufficient length of time must be allowed for the play of circumstances. The ebb and flow of chance could not be nicely calculated, and the capital of a company might, through very legitimate trading, and without the least danger of bankruptcy, be reduced to so small a sum as to excite alarm and hasten a result which otherwise might not have occurred. On the other hand, it was against the most evident and best established principles, that a company should be allowed to trade with the capital of others without giving an account of its transactions sufficiently minute and at reasonable intervals. After criticising with much ability the clauses of the late Bill, pointing out certain ambiguities and omissions, which, in any future legislation on the subject, should be guarded against,

he gave some valuable information on foreign legislation as regards friendly societies and insurance companies. He then proceeded to state as follows:—

"By the statute passed 1860, in the state commonwealth of Massachusetts, a board of insurance commissioners is appointed. These commissioners shall visit and examine any insurance company, when requested by five or more persons pecuniarily interested in such company, and also whenever the same shall deem an examination necessary.

"Upon some day in each year, designated by them, they shall calculate the value of all existing outstanding policies of life insurance. They may examine officers or other persons under oath.

"If, upon examination, they are of opinion that the company is insolvent, or that its condition is such as to render its further proceedings hazardous to the public, they shall apply to the justice of the supreme court for an injunction, and such justice may forthwith issue an injunction, and, after full hearing of the parties, dissolve or make perpetual the same."

"The Legislature in Prussia has dealt with this subject on the most extensive scale. A very minute supervision is exercised over every insurance company. After the most vigorous and rigid examination of the deed of settlement of such company, a special commissioner is appointed by the government for the constant supervision of each such company. So far this system of superintendence has been extended, that not a single fire insurance proposal can be entertained by any company without the same having previously been sanctioned by government.

"But there is only one opinion, that Government is going too far in such superintendence, and the present tendency of the Prussian Legislature is clearly to relax all these regulations.

'Only lately this subject has come under the consideration of the Prussian Home Secretary with regard to certain friendly societies, who, on the 21st June last, did express himself to the effect that, as a rule, any supervision should be restricted to the filing of an annual balance sheet, to the examination of the due administration and state of the funds generally, and especially to the proper investment of the assets; and that any further interference should take place only on distinct complaint being made. At the same time he generally expressed his views as to supervision of insurance societies in the following manner:—Although it is a high duty of government to prevent, not only fraudulent exactions, but also mismanagement arising from inexperience and carelessness, it ought not to be overlooked that any general and real endeavour to alleviate the misfortunes of human life by uniting to common action, is of the highest interest for the community at large, and the public authorities will have to well take care that such useful enterprise should not be repressed by their over zealous interference in an injurious manner.

"There is no doubt that these principles, as laid down here by the Prussian Home Secretary, will meet with general approval, and it is only to be hoped that they will be carried out with due energy in their true spirit."

This being the last general meeting of the present session, there was no discussion on the subject. But it is expected that, at an early meeting next session, it will receive the careful consideration of the society.

STAMPS ON FOREIGN BILLS OF EXCHANGE.

We extract the following from the *Times* City article of the 10th instant:—

The subjoined communication relates to the new peril introduced into all dealings in foreign bills of exchange by the Act which provides that the adhesive stamps required to be affixed on such bills shall be cancelled by the name and address of the first negociator being written across them. The measure seems as if it were distinctly framed to give a means of evading payment on a quibble, and is worthy to rank with some of the other recent specimens of commercial legislation in which sound principles have been wholly disregarded, while the most tenacious ingenuity has been devoted to the creation of technical pitfalls. We have seen, for instance, the Minister of the day allowing on the one hand a Bill to pass enabling trustees to invest funds in the speculative capital of a joint-stock bank, and on the other hand refusing to pay a dividend solemnly guaranteed by the Government and voted by the House of Commons without submitting the matter to a search for flaws on the part of the law officers of the Crown. The operation of the present Act is tantamount to imposing a penalty of £5,000 for an accidental neglect on the part of any one not conversant with its provisions in cancelling a 60*s.* stamp, since such irregularity would give a valid plea in law for the acceptor to refuse payment. Of course, as all the principal business of the country is conducted upon honour, the general risk of any individual being found ready to take advantage of the temptation thus placed in his way by our legislators is small, but exceptions will of course arise, and it is on behoof of the dishonest classes alone that such a statute can be permitted to exist:—

"Sir,—The commercial public are much indebted to you for directing attention to the consequences of neglecting to comply with the stringent requirements of the 17th & 18th Victoria, chap. 83, in reference to the cancellation of adhesive stamps on foreign bills of exchange. A long and extensive experience enables me to say, that the practical difficulty attendant on a literal compliance with the enactment, that the 'person who shall endorse, transfer, or negotiate such bill, shall, before he shall deliver the same out of his hands, custody, or power, cancel the stamp so affixed by writing thereon his name, or the name of his firm, and the date of the day and year on which he shall so write the name,' has led to its being in many, I might I think say in most cases disregarded.

"Foreign bills are frequently sent to private parties in this country, who know nothing of this requirement nor of the amount of stamp requisite, scarcely even where to obtain the stamps if they did know. They simply endorse the bill, and send it to their banker or agent, who affixes the stamp, but who, according to the strict interpretation of the Act in question, to which you refer, is not legally qualified to cancel it. But, even when such bills are remitted direct to merchants and bankers, they are often cancelled by the date merely, or, at most, by the date and the initials of the holders. And so common has this practice become, that the payers of such bills do not examine the cancellation of the stamp, but make their payment without further inquiry, provided the amount of such stamp be correct. If the payer were to inquire into this, much delay and inconvenience must arise from the difficulty that would be found in deciding whose name ought to be used for such purpose, and those acquainted with the subject know well that there is more than sufficient inconvenience now experienced in ascertaining the correctness of endorsements, without the party paying a bill having to inquire also into the correctness of the cancellation of the stamp. The only object of the provision in question being the protection of the revenue, it would seem to be amply sufficient that the stamp on foreign bills should be cancelled by any one of the persons whose names appear upon the back of the bill, and that the initials of such person, with the date of cancellation, would fully accomplish the object.

"As the present practice is found convenient, and seems to answer the purpose of securing the due payment of the stamp duty, and as, notwithstanding this, such practice may entail in many cases on those adopting it serious annoyance and loss, it is most desirable that some steps should be taken to obtain a modification of the clause which renders the present mode of cancellation illegal.

Public Companies.

BILLS IN PARLIAMENT

For the Formation of New Lines of Railway in England and Wales.

The following Bills have passed through committee in the House of Lords:—

Bishop's Stortford and Dunmow.
Conway and Llanrwst.
East Suffolk.
Forest of Dean Central.
Ramsey.
Swansea Vale.
Ware, Hadham, and Buntingford.

The following Bills have passed through committee in the House of Commons:—

Cornwall.
Saffron Walden.

REPORT OF MEETING.

London and Greenwich Railway.

At the half-yearly meeting of this company, held on the 9th inst., a dividend of £1 6*s.* 8*d.* per cent. on the ordinary stock of the company was declared for the past half-year.

Court Papers.

COMMON LAW VACATION BUSINESS AT THE JUDGES' CHAMBERS.

8th July, 1861.

The following regulations for transacting the business at these chambers will be strictly observed till further notice:—

Acknowledgments of deeds will be taken at half-past ten o'clock.

Original summonses only to be placed on the file.

Summonses adjourned by the judge will be heard at eleven o'clock precisely, according to the number on the adjournment file, and those not on that file previous to the numbers of the day being called will be placed at the bottom of the general file.

Summonses of the day will be called and numbered at a quarter after eleven o'clock, and heard consecutively.

The parties on two summonses only will be allowed to attend in the judge's room at the same time.

All long orders to be left that they may be ready on being applied for the following day.

Counsel will be heard at half-past one o'clock. The name of the cause to be put on the counsel file and heard according to number.

Affidavits in support of *exparte* applications for judge's orders (except those for orders to hold to bail) to be left the day before the orders are to be applied for, except under special circumstances, such affidavits to be properly endorsed with the names of the parties and of the attorneys, and also with the nature of the application and a reference to the statute under which any application is made, the party applying being prepared to produce the same.

All affidavits read or referred to before the judge to be properly endorsed and filed.

Further time to plead will not be given as a matter of course.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

English Funds.		Shrs.	Railways—*Continued.*	
Bank Stock	231	Stock	Ditto A. Stock	99
3 per Cent. Red. Ann..	89⅞	Stock	Ditto B. Stock	131
3 per Cent. Cons. Ann.	90⅛	Stock	Great Western	71
New 3 per Cent. Ann..	89⅞	Stock	Lancash. & Yorkshire	112
New 2½ per Cent. Ann.	..	Stock	London and Blackwall.	62
Consols for account ..	90¼	Stock	Lon. Brighton & S. Coast	120⅛
India Debentures, 1858.	..	25	Lon. Chatham & Dover	43
Ditto 1859.	..	Stock	London and N.-Wstrn..	94⅛
India Stock	..	Stock	London & S.-Westrn.	95½
India 5 per Cent. 1859..	99⅛	Stock	Man. Sheff. & Lincoln..	47½
India Bonds (£1000) ..	dis.	Stock	Midland	121⅛
Do. (under £1000).....	dis.	Stock	Ditto Birm. & Derby	97
Exch. Bills (£1000)...	7 dis.	Stock	Norfolk.....	58⅛
Ditto (£500)....	..	Stock	North British	63½
Ditto (Small) ..	..	Stock	North-Eastn. (Brwck.)	106¼
		Stock	Ditto Leeds	63½
		Stock	Ditto York	93½
Railway Stock.		Stock	North London.....	98
		Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock Birk. Lan. & Ch. Junc.	85			
Stock Bristol and Exeter....	96	Stock	Shropshire Union	48
Stock Cornwall	6	Stock	South Devon	40
Stock East Anglian	18	Stock	South-Eastern	81¼
Stock Eastern Counties	49⅛	Stock	South Wales	63
Stock Eastern Union A. Stock	41	Stock	S. Yorkshire & R. Dun	96
Stock Ditto B. Stock	30	25	Stockton & Darlington	40
Stock Great Northern	107¾	Stock	Vale of Neath	91

Births, Marriage, and Deaths.

BIRTHS.

MANNING—On July 4, at Blackrock, near Dublin, the wife of C. J. Manning, Esq., of a daughter, stillborn.

THOMPSON—On July 4, the wife of William Thompson, Esq., formerly of the Supreme Court, Calcutta, of a daughter, stillborn.

TREVENEN—On July 6, at Helston, Cornwall, the wife of William Trevenen, Esq., Solicitor, of a son.

WILLIAMS—On July 11, at 22, Lonsdale-square, N., the wife of R. Griffith Williams, Esq., Barrister-at-law, of a son.

MARRIAGE.

LEECH—HARRISON—On July 6, Samuel Leech, Esq., Solicitor, Derby, to Lydia, daughter of Joseph Bridgeford Harrison, Corn-market, Derby.

DEATHS.

PALGRAVE—On July 6, Sir Francis Palgrave, K.H., Deputy-Keeper of the Public Records, in his 73rd year.

RHODES—On July 6, aged 22, Alice, the wife of Charles Fredk. Empson, Surgeon, and daughter of Thomas Rhodes, Esq., Solicitor, Market Rasen.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

BAKER, SUSANNA, Widow, Fore-street, Cripplegate, £722 Reduced Three per Cents.—Claimed by Rev. THOMAS JAMES, the surviving executor.

LECHMERE, ANTHONY, & WILLIAM WALL, Bankers, Worcester, £123 18*s.* 3*d.* Consols.—Claimed by Rev. ANTHONY BERWICK LECHMERE, & JOSIAH CASTREE, the surviving executors.

London Gazettes.

Professional Partnership Dissolved.

TUESDAY, July 9, 1861.

WHALL, JOHN, & HENRY MASON, Attorneys and Solicitors, Worksop and Wakefield. July 6, by effluxion of time.

Windings-up of Joint Stock Companies.

TUESDAY, July 9, 1861.

UNLIMITED IN CHANCERY.

NATIONAL INDUSTRIAL AND PROVIDENT SOCIETY.—The Master of the Rolls will, on July 15, at 12, appoint an official manager or official managers of this company.

LIMITED IN BANKRUPTCY.

GREAT WESTERN IRON COMPANY (LIMITED).—Commissioner Hill will sit on Aug. 1, at 11, Bristol, to make a final dividend of the estate of the company.

MARYLEBONE GAS CONSUMERS COMPANY (LIMITED).—Peremptory order for a call of £1 per share, on contributories settled on the list, to be paid on or before July 30, to Edward Watkin Edwards, Official Liquidator, 22, Basinghall-street.

FRIDAY, July 12, 1861.

ISLE OF WIGHT FERRY COMPANY.—Petition for winding-up presented 8th July, will be heard before the Master of the Rolls, on July 20. Cates & Elgood, 48, Lincoln's-inn-fields, Agents for Hearn & Mew, Solicitors for Petitioner, Ryde, Isle of Wight.

LIMITED IN BANKRUPTCY.

LANDED INVESTMENT COMPANY (LIMITED).—Petition for winding up presented July 8, will be heard before Com. Fane on July 31, at 12. Kimber, Solicitor for the petitioner, 1, Lancaster-place, Strand.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, July 9, 1861.

BUTTERWORTH, EDMUND, Music Seller, Commercial-street, Leeds. Middleton & Son, Solicitors, 32, Park-row, Leeds. Sept. 1.

HARTCOP, WILLIAM, Gent., Little Hampton-street, otherwise Hampton-street, Birmingham, formerly Sword-blade Maker, Birmingham. Maudsley, Solicitor, 41, Temple-street, Birmingham. Aug. 19.

HINCHLIFFE, GEORGE HAYES, Solicitor, West Bromwich, Staffordshire. Gough, Solicitor. Aug. 5.

HUTCHINS, HENRY, Yeoman, Folly-farm, Mildenhall, Wilts. T. B. & W. Merriman & Gwillim, Solicitors, Marlborough, Wilts. Aug. 31.

JONES, ELIZABETH, Spinster, St. Leonards, Mortlake, Surrey. Fryer, Solicitor, 1 & 2, Gray's-inn-place, Gray's-inn, London. Sept. 5.

LEWIS, EDWARD, Glyn Fedr, Breconshire. Wilkins, Solicitor, 57, Old Broad-street, London, E.C. Aug. 12.

MAIR, WILLIAM, Plumber, Painter, Glazier, and Builder, West Malling, Kent. Clarke, Solicitor, 14, Serjeant's-inn, Fleet-street, London. Sept. 1.

ROACH, GEORGE RICHARD, Gent., 42, Sun-street, Liverpool. Wright & Hunter, Solicitors, 6, Brunswick-street, Liverpool. Aug. 3.

FRIDAY, July 12, 1861.

ANTROBUS, GIBBS CRAWFURD, Esq., Eaton Hall, Congleton, Cheshire. Reade, Solicitor, Congleton. Sep. 14.

BARRAS, JOHN, Brewer, Farnacres, near Gateshead, Durham. Armstrong, Solicitor, 60, Dean-street, Newcastle-upon-Tyne. Sep. 12.

CARELESS, JAMES, Licensed Victualler, Epsom, Surrey, Free Vintner, formerly of the Paxton Arms Tavern, Anerly, same county. White & Ward, Solicitors, County Court, Epsom. Aug. 1.

GROVES, BELINDA, Spinster, Over Monnow, Monmouth. George, Solicitor, Monmouth. Aug. 14.

KNOTT, ELIZABETH INWOOD, Widow, High-street, Deptford, Kent. Paine & Layton, Solicitors, Gresham-house, 24, Old Broad-street, London. Sep. 10.

LEWIN, THOMAS FOX, Esq., late of Haverstock-hill, Middlesex, of the Corn Exchange, Mark-lane, and of Kennett-wharf, Upper Thames-street, London. Gregory, Skirrow, Rowcliffe, & Rowcliffe, Solicitors, 1, Bedford-row, London. Aug. 20.

MORGAN, MARY, Widow, Sevenoaks, Kent, and afterwards of Hillingdon, Middlesex. Batt, Solicitor, Uxbridge, Middlesex. Aug. 24.

MEMBRAY MARGARET, Widow, 44, Saint Paul's-terrace, Canonbury, Middlesex. Stuart, Solicito, 5, Gray's-inn-square, London. Sept. 9.

OSBROOK, WILLIAM, Gent., Kexby, Lincoln. Heaton & Oldman, Solicitors, Gainsborough. Sept. 3.

PEARCE, JOHN, Shopkeeper, Leedstown, Crowan, Cornwall. Rogers & Son, Solicitors, Helston. Aug. 15.

SCARRATT, JAMES, Button & Trimming Seller, Milk-street, Cheapside, London. Lawrence, Plews, & Boyer, Solicitors, 14, Old Jewry Chambers, London. Aug. 1.

TOMLINSON, MARMADUKE, Gent., formerly of Leeds, but late of Mickley Lodge, West Riding, Yorkshire. North & Son, Solicitors, 4, East Parade, Leeds. Oct. 1.

TOSER, RICHARD CASTELL, Gentleman, Evesham, Oxford. Walsh, Solicitor, 10, New Inn, Hall-street, Oxford. Aug. 23.

WATKINS, WILLIAM GEORGE, Watch & Case Gilder, and Electro Plater & Gilder, 7, James-street, St. Luke's, Middlesex. Stopher, Solicitor, 36, Coleman-street, London. Sept. 1.

WELTDEN, CATHERINE, Widow, Marine-parade, Dover. Parker, Solicitor, 40, Bedford-row. Aug. 31.

WYATT, WILLIAM, Oilman, formerly of King-street, Soho, Middlesex, afterwards Gent., of Rickmansworth, Hertfordshire, and late of Pinner, Middlesex. Lawrance, Plews, & Boyer, Solicitors, 14, Old Jewry-chambers; or Barton & Longden, Solicitors, 1, Bennet's-hill, Doctors'-commons. Aug. 1.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, July 9, 1861.

BIGGS, THOMAS, Wine Merchant, Grafton-place, Norwood, Surrey. Saxton *v.* Biggs, M. R. Nov. 2.

GARDNER, JAMES, Yeoman, Brize Norton, Oxfordshire. Gardner v. Evans, V.C. Kindersley. Aug. 1.

GENT, GEORGE, Esq., Moyns Park, Steeple Bumpstead, Essex. Finch *v.* Gent, M. R. Nov. 2.

HORWOOD, ANN, Spinster, 2, Spencer-street, Islington, Middlesex. Nicklinson *v.* Tibbatts, M. R. July 30

HUBER, DANIEL, Baker, 158, Whitechapel-road, Middlesex. North *v.* Huber, M. R. Aug. 1.

JARVIS, STEPHEN, Gent, formerly of Marshalls Sawbridgeworth, Hertfordshire, but late of 23, Cecil-square, Margate, Kent. Jarvis *v.* Jarvis, M. R. Aug. 5.

LILLEY, ELIZABETH, Widow, Boston, Lincolnshire. Procter *v.* Slight, M. R. July 30.

MOLYNEUX, MARY ANN, Gambier-terrace, Hope-street, Liverpool. Whitelock *v.* Hassall, V.C. Kindersley. Aug. 5.

SHEPPARD, MARY, Widow, Sand, Kewstoke, Somersetshire. Sheppard *v.* Sheppard, M. R. Nov. 4.

FRIDAY, July, 12, 1861.

BEACH, JOSEPH, Farmer, Tamworth, Warwickshire. Wells *v.* Boulton, V.C. Wood. Aug. 5.

BRIGHT, RICHARD, Silk Mercer & Linen Draper, formerly of Bold-street, Liverpool, and late of Spa-villa, Great Malvern. Bright *v.* Bright, M.R. Nov. 2.

JONES, MARY, Spinster, 6, Holland-place, Kensington, Middlesex. Maunder *v.* Barnes, M.R. Aug. 3.

KNOTT, WILLIAM, Gent., 3, Newington-place, Kennington, Surrey. Bousfield *v.* Bousfield, M.R. Aug. 5.

POSTLE, JEHOSAPHAT DAVY, Blofield, Norfolk. In re Postle, M.R. July 29.

ROBERTSON, ALEXANDER, Parliamentary Agent, 1, Great College-street, Westminster. Lamb *v.* Daley, V.C. Stuart. Nov. 2.

TAYLOR, GEORGE EDWARD, Gent., Bristol. Frayne *v.* Taylor, V.C. Kindersley. Aug. 2.

Assignments for Benefit of Creditors.

TUESDAY, July 9, 1861.

BROWN, GEORGE, Tailor and Draper, Knaresborough, Yorkshire. *Sol.* Harle, 10, Bank-street, Leeds June 14.

EWIN, ROBERT, & RICHARD MIDDLETON, Upholsterers & General House Furnishers, 4, High-street, Islington, Middlesex. *Sol.* Scott, 4, Skinner-street, Snow-hill, London. June 12.

LEACH, ELIZABETH, & CALEB LEACH, Drapers, Bradford. *Sol.* Wood, Hall Ings, Bradford. June 14.

LOCKS, WILLIAM, Mahogany and Timber Merchant, Hoxton Old Town, Shoreditch, Middlesex. *Sol.* Carr, 25, Rood-lane, London. July 4.

NUDDS, WILLIAM SMITH, Carpenter and Builder, Chapel Field-road, St. Stephen's, Norwich. *Sol.* Sadd. Theatre-street, Norwich. June 11.

PEARSON, BENJAMIN GRIMSHAW, & WILLIAM ABEXANDER BRIGGS, Manufacturers, Stanhill, Church, Lancashire. *Sols.* G. & R. W. Marsland, 23, John Dalton-street, Manchester. June 18.

SHARMAN, JOHN CLOSE, Baker and Confectioner, Great Yarmouth. *Sol.* Costerton, Queen-street, Great Yarmouth. June 25.

TAYLOR, ROBERT, Cart Owner, 201, Upper Parliament-street, Liverpool. *Sol.* Conway, 4, Harrington-street, Liverpool. June 14.

THOMAS, WILLIAM, & DAVID THOMAS, Drapers, Grocers, and Ironmongers, Pontwelly, Llanfihangelveroth, Carmarthenshire. *Sols.* Bevan, Girling, & Press, 3, Small street, Bristol. June 22.

WILKINSON, SARAH, Hotel Keeper, Carlisle. *Sol.* Bendle, Carlisle. June 24.

FRIDAY, July 12, 1861.

CASSIDY, PATRICK, Tailor & Draper, 57, Aldersgate-street, London. *Sol.* Peckham, 40, Ludgate-street, London. June 14.

COTTON, BENJAMIN, & CHARLES COTTON, Draper, Crewe, Chester. *Sol.* Worthington, Manchester. June 19.

DUDLEY, ROBERT JOHN, & JOHN EDWARDS, Jewellers & Photographic Case Manufacturers, 28, Gloucester-street, Clerkenwell, Middlesex, *Sol.* Stopher, 36, Coleman-street. July 9.

EAVES, RICHARD, Plumber, Glazier, & Painter, Coleshill, Warwickshire. *Sol.* Saunders. 41, Cherry-street, Birmingham. June 17.

HAWKES, JOSEPH, Straw Hat Manufacturer, 40, George-street. Luton, Bedfordshire. *Sols.* Ingle & Gooddy. 37, King William-street, London-bridge. July 8.

HUDSON, EDWARD BAXTER, Grocer & Tea Dealer, 16, Crawford-street, St. Marylebone, Middlesex. *Sol.* Peachey, 17, Salisbury-square, Fleet-street, London. July 8.

IBBOTSON, JOSEPH, Ship Owner, Shipping & Commission Agent, Goole, Yorkshire. *Sol.* England, Howden, Yorkshire. June 15.

MILLS, WILLIAM, Grocer & Provision Dealer, Prince's End, Sedgeley, Staffordshire. *Sol.* Barns, Horseley Heath, Tipton. June 7.

MONCK, CHARLES STEPHENS, Outfitter, Southsea, Hants. *Sols.* Mason, Sturt, & Mason, 7, Gresham-street, London. June 20.

NETHERTON, CHARLES SOWELL, Tailor & Draper, Manchester. *Sols.* Langford & Marsden, 69, Friday-street, Cheapside, London. July 3.

PORTER, WILLIAM, Grocer, Melksham, Wilts. *Sols.* Moule & Gore, Melksham. June 12.

WIFFEN, JOHN, General Shopkeeper, Littleport, Isle of Ely, Cambridgeshire. *Sol.* Hall, Ely. July 1.

Bankrupts.

TUESDAY, July 9, 1861.

BARBER, THOMAS CREASY, Currier and Leather Seller, 67, High-street, Gravesend, Grays, Essex, and Enfield Middlesex. *Com.* Fane: July 20, at 11, and Aug. 16, at 1.30: Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Wilkinson, Stevens, & Wilkinson, 4, Nicholas lane, Lombard-street, or Sharland, Gravesend. *Pet.* July 6.

BRITTON, MAURICE WINGRAVE, Wholesale Milliner, 152, Shoreditch, Middlesex. *Com.* Fane: July 22, at 2, and Aug. 23, at 12.30; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Mason, Sart, & Mason, 7, Gresham-street, London. *Pet.* July 8.

CRESSEY, JAMES, Grocer, Wakefield. *Com.* Ayrton: July 23, and Aug. 20, at 11; Leeds. *Off. Ass.* Hope. *Sol.* Markland, Leeds. *Pet.* July 3.

DAVIS, GEORGE, Builder, Plumber, and Brass Founder, Southampton. *Com.* Fane: July 20, at 1, and Aug. 23, at 12; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Stocken, 61, Cornhill. *Pet.* July 8.

GOODWIN, GEORGE, Auctioneer and General Dealer, Manchester. *Com.* Jemmett: July 24 and Aug. 21, at 12; Manchester. *Off. Ass.* Hernaman. *Sol.* Stead, Essex-street, Manchester. *Pet* July 5.

GREEN, JOHN, Licensed Victualler, Swansea, Glamorganshire. *Com.* Hill: July 22 and Aug. 27, at 11; Bristol. *Off. Ass.* Miller. *Sol.* Strick, Swansea, or M. Brittan & Sons, Bristol. *Pet.* June 7.

HORNSEY, GEORGE, Gasfitter and Engineer, 13, West Front, Kingsland-place, Southampton. *Com,* Fane: July 20, at 12.30, and Aug. 16, at 2; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Thomson & Son, 60, Cornhill. *Pet.* July 6.

IBBOTT, JAMES, Builder, Somersham, Huntingdonshire. *Com.* Fane: July 19, at 11.30, and Aug. 16, at 12.30: Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Emmet & Son, 14, Bloomsbury-square, or Nicholson, St. Ives, Huntingdonshire. *Pet.* July 2.

LEES, THOMAS, Contractor, Norwood, Surrey. *Com.* Holroyd: July 23, at 11, and Aug. 20, at 1: Basinghall-street. *Off. Ass.* Edwards. *Sol.* Abraham, 17, Gresham-street, London. *Pet.* June 27.

MOSS, THOMAS JOSEPH, Jeweller, 19a, Edgware-road, Hyde Park, Middlesex. *Com.* Evans: July 18, at 11 30, and Aug. 17, at 11; Basinghall-street. *Off. Ass.* Bell. *Sol.* Abrahams, 17, Gresham-street. *Pet.* July 4.

OVENDEN, HENRY FRENCH, Draper, Maidstone, Kent. *Com* Evans: July 15, at 11.30, and Aug. 14, at 12.30; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Sole, Turner, & Turner, Aldermanbury. *Pet.* July 2.

PARNHAM, WILLIAM, Licensed Victualler and Dealer in Tobacco, Nottingham. *Com.* Sanders: July 19, and Aug. 13, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Smith, High-street, Nottingham. *Pet.* July 5.

ROSS, CHARLES, Butcher, Walsall, Staffordshire. *Com.* Sanders: July 19 and Aug. 8, at 11: Birmingham. *Off. Ass.* Kinnear. *Sol.* Moore, Walsall, or James & Knight, Birmingham. *Pet.* June 28.

SHELLARD, JOHN EDWARD, British Wine Manufacturer, Bristol. *Com.* Hill: July 22, and Aug. 26, at 11; Bristol. *Off. Ass.* Miller. *Sols.* M. Brittan & Sons, Bristol. *Pet.* July 5.

SHREEVE, WILLIAM BANTON, & CHARLES SHREEVE, Builders, Burton-upon-Trent, Staffordshire. *Com.* Sanders: July 15 and Aug. 14, at 11; Birmingham. *Off. Ass.* Kinnear. *Sol.* Flewker, Derby. *Pet.* July 8.

SOLOMON, LOUIS, Cap Manufacturer and Trimming Seller, 128, London-wall, London. *Com.* Evans: July 25 and Aug. 14, at 2: Basinghall-street. *Off. Ass.* Bell. *Sols.* Blake & Snow, 22, College-hill, Cannon-street. *Pet.* June 28.

WILSON, RICHARD, Flax Spinner, Leeds. *Com.* Ayrton: July 23 and Aug. 20, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Teale & Appleton, Leeds. *Pet.* July 2.

WILSON, THOMAS, Saddler, Calverley, Salop. *Com.* Sanders: July 19 and Aug. 8, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Potts & Gordon, Bridgnorth, or James & Knight, Birmingham. *Pet.* July 3.

FRIDAY, July 12, 1861.

ANDREWS, JOHN GEORGE, Licensed Victualler, Pewter Platter Public-house, Charles-street, Hatton-garden, Middlesex. *Com.* Fane: July 26, at 12.30, and Aug. 23, at 11.30; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Edwards, 12, Furnival's-inn. *Pet.* July 10.

BENTON, JOHN WHEELDON, Picture Frame Maker, 62, Sun-st., Bishopsgate-st., London. *Com.* Evans: July 25, at 11, and Aug. 29, at 12; Basinghall-street. *Off. Ass.* Bell. *Sol.* Weatherfield, 17, Devonshire-square. *Pet.* July 4.

BRAIME, JOSEPH, Grocer, Joiner, & Farmer, Methley, York. *Com.* Ayrton: July 29, and Aug. 20, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Rayner, Horbury; or Bond & Barwick, Leeds. *Pet.* July 11.

BROWN, PATRICK, Lead & Glass Merchant, 3, Paddington-green, and 7, West-place, Islington-green, Middlesex. *Com.* Fane: July 25, at 11.30, & Aug. 30, at 1: Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Lawrence, Smith, & Fawdon, 12, Bread-street, Cheapside. *Pet.* July 11.

BROWN, ISAAC, Wine Merchant, late of Brabant-court, Philpot-lane, London, but now of 25, Philpot-lane. *Com.* Fane: July 24, at 1, & Aug. 23, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Hensman & Nicholson 25, College-hill. *Pet.* July 11.

BRUTON, JOHN, Dealer in Corn, Chandler, Wood & Manure Dealer, Hereford. *Com.* Sanders: July 26 & Aug. 16, at 11: Birmingham. *Off. Ass.* Whitmore. *Sols.* Garrold, Hereford, or E. & H. Wright, Birmingham. *Pet.* July 10.

COCKAYNE, CHARLES, Builder & Licensed Victualler, Cannock Chase Burntwood, Staffordshire. *Com.* Sanders: July 26 & Aug. 16, at 11: Birmingham. *Off. Ass.* Kinnear. *Sols.* Jackson, West Bromwich, or E. & H. Wright, Birmingham. *Pet.* July 10.

DEFRIES, ELEAZAR, Gas Meter, Stove & Bath Manufacturer, 405, Euston-road, Middlesex, and of 19, Taviton-street, Middlesex. *Com.* Holroyd: July 23, at 1.30, and Aug. 27, at 12: Basinghall-street. *Off. Ass* Edwards. *Sol.* Lindus, 35, Bedford-row, London. *Pet.* July 2.

HALL, ROBERT, Army Clothier & Tailor, Great Warley, Essex. *Com.* Holroyd: July 15, at 11, and Aug. 13, at 11.30; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Preston, 14, Broad-street-buildings, London. *Pet.* July 2.

INGLEDEW, JAMES FREDERICK, Coal Merchant & Furniture Dealer, 20, St. James's-street, and of 7, Rock-place, Brighton. *Com.* Fane: July 24, at 11, and Aug. 23, at 1.30; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Laurance, Plews, & Boyer, 14, Old Jewry Chambers, Old Jewry. *Pet* July 9.

JONES, MARY ANN PILON, Widow, Licensed Victualler, 2, Buckingham-street, Strand, Middlesex. *Com.* Fane: July 24, at 12, and August 23, at 2: Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Wild & Barber, 10½, Ironmonger-lane. *Pet.* July 10.

MASON, JOHN GURNEY, Ironmonger, Ironmonger-street, Stamford, Lincolnshire. *Com.* Sanders: July 23, and August 20, at 11.30; Nottingham. *Off. Ass.* Harris. *Sols.* James & Knight, Birmingham, or to Shephard, 9, Size-lane, London. *Pet.* July 5.

MONK, HENRY, Furniture Dealer, Shoeburyness, Essex. *Com.* Fane: July 23, at 2, and August 23, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Wells, 47, Moorgate-street. *Pet.* July 9.

ROBERTS, WALTER, Builder, Phœnix Works, East Stonehouse, Devonshire. *Com.* Andrews: July 22, and Sep. 2, at 12.30; Plymouth. *Off. Ass.* Hirtzel. *Sols.* Elworthy, Curtis, & Dawe, Plymouth. *Pet.* July 11.

SMITHSON, STEPHEN STORRY, Provision Merchant & Ship Owner, Kingston-upon-Hull. *Com.* Ayrton: July 24, and August 21, at 12; Kingston-upon-Hull. *Off. Ass.* Carrick. *Sols.* Lightfoot, Earnshaw, & Frankish, Hull; or Pettingell, Hull. *Pet.* July 6.

WORSLEY, JOSEPH, Draper, Witton, Chester. *Com.* Perry: July 22, and Aug. 15, at 12; Liverpool. *Off. Ass.* Bird. *Sol.* Cheshire, Northwich. *Pet.* July 9.

BANKRUPTCY ANNULLED.

TUESDAY, July 9, 1861.

COLLIER, JAMES, Topmaker, Menston, Yorkshire. July 4.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, July 9, 1861.

BROWN, WILLIAM, Butcher, Marlborough. Wilts. Aug. 1, at 11; Bristol. —HOLDICH, THOMAS LOW, Ironmonger and Seedsman, Hinckley, Leicestershire. Aug. 2, at 11; Birmingham.—HULFORD, JOSEPH, Licensed Victualler, Navigation Inn, Oxford-street, Birmingham. Aug. 2, at 11; Birmingham.—JOHN, WILLIAM, Grocer, Draper. and Dealer in Provisions, Pontypridd, Glamorganshire. Aug. 1, at 11; Bristol.—PEARSON, GEORGE, Machine Maker, Store-street Mills, Manchester (George Pearson & Co.) Aug. 6, at 12; Manchester.—PERKES, SAMUEL, Engineer, Manufacturer of and Dealer in Machines for the Crushing of Ores, and Manufacturer of and Dealer in Bedsteads. Aug. 1, at 1.30; Basinghall-street.—RILEY, JOHN, Ironfounder and Machine Maker, Blackburn, Lancashire. July 31, at 12; Manchester.—ROBINSON, MARK, Shoemaker and Leather Seller, Bloxwich, Staffordshire. Aug. 2, at 11; Birmingham.—STARKEY, RICHARD, Draper, Stroud, Gloucestershire. Aug. 1, at 11; Bristol. — STOVELD, MARGARET JANE, Ship Builder, Blyth, Northumberland. August 1, at 1; Newcastle-upon-Tyne. — SUTCLIFFE, JOSEPH, Upholsterer, Scarborough, Yorkshire. July 29, at 11; Leeds.—TURPIN, WILLIAM, Builder, Methley, near Leeds. July 29, at 11; Leeds.—WOOLTORTON, CHARLES, Ironmonger, 73 & 74, West Smithfield, London. Aug. 1, at 12.30; Basinghall-street.—YOUNG, JOHN JAMES CHRISTOPHER, Licensed Victualler, Duke of Wellington Public-house, Stonebridge-common, Kingsland, Middlesex. Aug. 1, at 11; Basinghall-street.

FRIDAY, July 12, 1861.

BARTON, THOMAS, Tanner, Liverpool (Barton & Son). Aug. 2, at 12; Liverpool.—BEART, MORLEY, Brickmaker, Upwell, Norfolk. Aug. 2, at 1.30; Basinghall-street. — BULLAMORE, RICHARD, Baker, Grocer, & Draper, Boon Gate and New England, Peterborough. Aug. 2, at 12; Basinghall-street. — CALVERLEY, JOHN, Builder, 34, Portsdown-road, Maida-vale, Middlesex. Aug. 2, at 1.30; Basinghall-street. — COPELAND, ELIZABETH, Widow, Grocer & Druggist, March, Cambridgeshire. Aug. 2, at 2; Basinghall-street.—EGAN, RODOLPHUS, Gun Maker, Bradford. August 2, at 11; Leeds. — HIGHWAY, THOMAS, & CHARLES HIGHWAY, Iron Masters, Coal Masters, Iron Manufacturers, Lime Masters, Brickmakers, Millers, Maltsters, Bakers, & Provision Dealers, Walsall, Stafford. Aug. 5, at 11; Birmingham.—HOLT, THOMAS. Retailer of Beer, Leeds, York. Aug. 2, at 11; Leeds.—MARSHALL, WILLIAM SEYMOUR, Cooper & Hardwareman, Durham. Aug. 2, at 11.30; Newcastle-upon-Tyne.—ROBINSON, BENJAMIN, Cloth Merchant, Huddersfield, York. Aug. 2, at 11; Leeds.—TONGUE, JOSEPH, Boot & Shoe Maker, Rugby, Warwick. Aug. 2, at 11; Birmingham.—TURNER, JOHN, Grocer, Halifax, York. Aug. 2, at 11; Leeds.—WHITELOCK, 'PETER, Grocer, Leeds, York. Aug. 2, at 11: Leeds.—YOUNG, FREDERICK, Woollen Warehouseman, 29, Basinghall-street, London, Aug. 2, at 11.30; Basinghall street.—YRIGOTTI, FRANCIS DE, Wine Merchant, Muscovy-court, Tower-hill. Aug. 2, at 1; Basinghall-street.

We cannot notice any communication unless accompanied by the name and address of the writer.

*** Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher*

THE SOLICITORS' JOURNAL.

LONDON, JULY 20, 1861.

CURRENT TOPICS.

The Benchers of the Inner Temple have at length arrived at a decision in the case of Mr. Edwin James, which has been notoriously pending before them for some months past. On Thursday evening, they decided after a long investigation and many adjournments, that Mr. Edwin James should be disbarred, and the decision was ordered to be communicated to all the judges of the superior courts, both of law and equity, and the other three inns of court. We are not aware whether this communication will disclose anything more than the mere fact of the name of Mr. James being struck off the roll of the Inner Temple. It is rumoured very currently, however, that the most serious charge which the benchers had to consider was not that in respect of which Mr. James is said to have been compelled to relinquish his seat in Parliament, and the recordership of Brighton, but another, more immediately affecting his character as an advocate. But as all the proceedings have been conducted with secresy, it is not likely that the public or the profession will ever have any opportunity of learning upon authority either the specific charges or the character of the evidence which was brought against Mr. James. It has been reported that while the proceeding was still pending, Mr. James offered, if it were allowed to drop, to give an undertaking never again to practise in England or any English colony, and that he made this offer with the view of proceeding to the United States in his character of an English barrister, and of obtaining leave to practise there, which will probably now be impossible. It has not yet been announced what the Government intend to do about his patent as Queen's Counsel. There is no instance on record, that we know of, in which one of her Majesty's Counsel has been disbarred; but there appears to be no room to doubt as to what ought to be done in such a case. It is impossible that a man who is declared unfit to remain a member of his Inn of Court should be allowed to hold professional rank and social precedence in his capacity of Queen's Counsel.

A commission to inquire into the constitution and procedure of the Irish common law and equity courts is about to be issued on the motion of Lord Clanricarde. Its main ground is that the judicial establishment in Ireland has grown out of all proportion with the work which it has to perform. If reliance can be placed upon the statistics which have been adduced, there certainly appears to be insufficient work in Ireland for twelve superior common law judges. According to Lord Clanricarde two puisne judges in England do as much as nine in Ireland. The question is one in which both suitors and solicitors are especially interested, as the most serious portion of the cost of litigation arises at present from the heavy court fees which are required to maintain expensive judicial establishments.

In the case of *Clarke* v. *Mitchell*—an appeal before the House of Lords on Wednesday last—of the two law lords present when judgment was delivered one, Lord Cranworth, was for affirming, and the other, Lord Wensleydale, was for reversing the decision of the Court below; and their lordships being equally divided in opinion, the judgment appealed from was affirmed. Thereupon some discussion took place with regard to the question of costs, on which also there was a difference between the two learned lords—Lord Wensleydale desiring to have the appeal dismissed without costs, upon the ground that there was an equal division of opinion between the judges of appeal; but Lord Cranworth considering that the appeal ought to be dismissed with costs, because it was usual for the costs to follow the event; and the question being put to their Lordships' House, the decision was in favour of Lord Cranworth's view on this point. This decision corresponds to that of the present Lord Chancellor, reported last week in this journal. Lord Westbury there stated that, unless in very exceptional cases, he was of opinion that costs ought to follow the event. Although this rule, if too inflexibly adhered to, may sometimes work harshly, there is no doubt that, upon the whole, it is very convenient, and tends to discourage protracted and reckless litigation.

The massacre of the innocents has commenced already. The Trade-marks Bill, after passing the House of Lords, and gaining a second reading in the House of Commons, has been shelved till next session. Mr. Milner Gibson announced on Thursday evening, that since considerable difference of opinion existed as to what the precise provisions of a Bill to prevent the forging of trade-marks should be, it was thought advisable to bring it in at the earliest moment next session and to refer it then to a select committee. It therefore stands over for the present.

The National Association for the Promotion of Social Science proposes to hold its fifth annual meeting at Dublin, from the 14th to the 21st of next month. Lord Brougham will preside. In the department of "Jurisprudence and Amendment of Law," of which the Right Hon. Joseph Napier is president and one of the Irish judges is vice-president, papers upon the following subjects will be read:—

I. The Principles of Jurisprudence and Legislation.—Province of legislation, adaptation of law to social changes, statute law of Ireland as compared with that of England.

II. The Method of Legislation.—The preparation and passing of Bills, minister of justice, judicial and legislative statistics, codification, &c.

III. The Administration of Justice.—Superior and local courts, procedure and evidence—Professional regulations.

IV. Laws relating to Property.—Mercantile law—Real property law, transfer of land, registration of title—Landed Estates Court, patent law, &c.

V. Laws relating to Persons.—The law of marriage, law of domicile, &c.

The honorary secretaries of the department are—in England, J. Napier Higgins, Esq., of Lincoln's-inn, and Arthur Ryland, Esq., of Birmingham; in Ireland, D. C. Heron, Esq., Q.C., and W. D. Ferguson, Esq., LL.D. Any gentleman desirous of reading a paper at the meeting should send the same to the General Secretary, at the office of the society, 3, Waterloo-place, Pall-mall, London, or to one of the honorary secretaries of the department, on or before the 1st of August next; and the subject, the name of the author, and his address, should be written on the first page of the paper.

THE BANKRUPTCY BILL.

The reception which the proposal of the Government to retain a chief judge in bankruptcy met on Thursday night in the House of Commons renders it very unlikely

that the Bill will pass this session. The amendments which were made by the Lords were very numerous, but most of them were merely obvious corrections and emendations in a draft which was never remarkable for its lucidity of arrangement or accuracy of expression. The Lords, however, made two important and radical changes in the measure. They struck out the clauses providing for the appointment of a chief judge and the constitution of a new Court of Appeal in Bankruptcy; and they also very much modified the clauses relating to the creditors' assignees, so as in effect to restore the functions of the official assignee. After a considerable delay and some disappointments, Lord Palmerston on Tuesday evening stated to the House of Commons that the Government intended to recommend the House to agree to the Lords' amendments in regard to the constitution of a new court of appeal, but that the Government was disposed to insist upon a preference of the clause relating to creditors' assignees. On Thursday, however—notwithstanding this announcement of the Premier — the Attorney-General made an elaborate speech against these amendments of the Lords, which he considered, "whether for good or for evil, materially affected the character and scope of the measure." Although his speech was a long one, and had evidently been carefully prepared, the arguments which he adduced in favour of his motion may be fairly stated in a very small compass. First, he alleges that the present Court of Appeal in Bankruptcy is costly and dilatory, and that the Lords Justices could not be expected "to address themselves summarily to appeals in bankruptcy to the neglect of their more ordinary business." This argument, however, as Mr. Rolt subsequently stated, proceeds upon a mere hallucination. There is no reason why an appeal to the Lords Justices should cost one shilling more than an appeal to a Chief Judge, and we believe that Sir William Atherton's estimate of £60 "as the smallest or the average expense," is the purely conjectural statement of an advocate. At all events whatever the average expense of an appeal in Bankruptcy may be at present, it is owing either to the character of the general run of the cases or to onerous Court fees. If proceedings before the existing Court of Appeal are burdened by the latter, that is no reason why Parliament should constitute a new court for the purpose of easing suitors of this burden. It may be removed in a less expensive way than by creating a new tribunal for the purpose. No one can pretend that the proposed court would so alter the character of the business in appeals coming before it as to reduce the costs to any appreciable extent in this manner. But Sir William Atherton also objects to the present court on the ground that its proceedings are dilatory, and that it has not time to attend to appeals in bankruptcy. Both of these statements, however, are such as ought not to have been made in Parliament by a law officer of the Crown, because neither of them has any foundation in fact. Appeals in chancery and also in bankruptcy are now heard with much greater expedition than appeals are heard at common law. We believe that, as a rule, any bankruptcy appeal may be heard within two or three weeks after it is put in the paper for hearing; and throughout all the agitation which has taken place for the reform of the bankruptcy law no one ever alleged the dilatoriness of the present court of appeal as a reason for the proposed change. The Attorney-General having made the charge of delay, was of course bound to account for it; and he does so by referring to the great amount of important business, besides appeals in bankruptcy, which the Lords Justices have to attend to, and which, he says, they must neglect if they were not to postpone bankruptcy appeals. It is evident that when the Attorney-General made this statement he had taken very little trouble to acquaint himself with what he was talking about. It is matter of notoriety in the profession that for the last two or three years the chancery appellate business has been frequently at zero, that the courts of appeal have been living merely from hand to mouth, and that the Lords Justices have sometimes been enabled to attend the Privy Council for want of work at Lincolns' Inn. Everybody knows that the Rolls more than once lately has been closed, because there were no causes in the paper for hearing. Even the general public have read in all the newspapers that when the late Lord Chancellor rose at the commencement of last long vacation, there was not a single appeal then pending. Is it not then a little too bad to hear the first law officer of the Crown making such statements to the House of Commons as the ground for its rejecting an amendment of the Lords, which was adopted by their lordships on the recommendation of Lords Cranworth, Kingsdown, St. Leonards, Wensleydale, and Chelmsford, and which had no other opponent among the law lords than Lord Chancellor Campbell? The number of appeals decided in bankruptcy by the Lords Justices last year was only forty-five; but assuming it to be doubled or trebled under the proposed new jurisdiction of the county courts, we have no hesitation in saying that the present Court of Appeal will be able to do the work not only with sufficient speed, but in a manner more completely satisfactory than could be expected from a single judge.

The next argument of the Attorney-General in favour of a new appeal judge, relates to his proposed duties at chambers. The 59th clause of the Bill as it stood when it went to the House of Lords provided that the chief judge and commissioners should respectively sit at chambers for the dispatch of such part of the business of their courts as could "without detriment to the public advantage arising from the discussion of questions in open court" be heard in chambers; and by the 61st clause, any party during the proceedings before a registrar was to be at liberty to take the opinion of the judge or commissioner upon any point or matter arising in the course of such proceedings, which was to be stated by the registrar in the shape of a short certificate to the judge or commissioner, and his signature to the same was to be binding on all parties to the proceeding. The Lords in these two clauses have simply struck out the judge and not interfered with the jurisdiction intended to be conferred upon the commissioners. The Attorney-General, however, considers that the provision of the Bill enabling any party to have recourse to the chief judge for his advice would confer a great advantage both on debtors and creditors. Upon this question we have only to remark that the work done at chambers is much more suitable to a commissioner or a county court judge than to a purely appellate judge. There can be little doubt that practically the 59th clause would be a dead letter so far as it affected the chief judge; and it is not easy to imagine any case of an appeal in bankruptcy which ought not to be discussed in open court rather than in chambers. The 61st clause as it stood before amendment by the Lords was simply preposterous. Last year there were 2,820 petitions in the Insolvency Court, and 1,336 bankruptcies and petitions for private arrangements. There were also over 14,000 creditors' deeds of arrangement which, under the present Bill, must be registered in the new court. If, therefore, the chief judge had been appointed last year, every one of the parties to these 18,000 and odd causes and proceedings, would have been at liberty, as often as he pleased, while the proceedings were before the registrar, to require that officer to frame a case for the opinion of the chief judge. Sir William Atherton says that under the proposed system, not only the number of appeals, but the entire bankruptcy business of the country would be greatly increased; but still being fearful that the appellate business would be insufficient to occupy the time of the chief judge, he suggests that the applications under the 61st clause from parties desirous to have his opinion, would probably be sufficient to prevent him

from having an unreasonable amount of leisure. But we cannot help thinking that if the clause is not in practice made altogether nugatory, so far as it affected the chief judge (which would undoubtedly be the case), he would not only have no leisure on his hands, but would have no time to attend to his proper business of hearing appeals. But, in truth, this specious and new-fangled notion of every party to a cause being at liberty to rush into the chambers of every judge for extempore advice and assistance, has been found practically to be a "delusion, a mockery, and a snare." It has proved utterly abortive in the Court of Chancery, and so it would in the Court of Bankruptcy. It proceeds altogether upon a misconception of the proper functions of the judge, and of the relation between him and suitors. It is an attempt to introduce into England the practice of Utopia. Sir Thomas More tells us, *Utopienses causidicos excludunt . . . volunt ut suam quisque causam agat, eamque referat judici quam narraturus fuerat patrono; sic minus ambagum, et veritas facilius elicietur.* We admit that old Burton, in his "Anatomy of Melancholy," argues in favour of the same rule; for he would have "every man, if it were possible, to plead his own cause, to tell that tale to the judge which he doth to his advocate, as at Fez in Africk, Bantam, Aleppo, Raguse, *suum quisque causam dicere tenetur;*" and M. Ubicini, in his book on Turkey, tells us that even at the present day the Government of that country provides lawyers who are bound, for a fee of about twopence-halfpenny of our money, to answer any case that is presented to them. But notwithstanding the strong efforts which have recently been made to introduce the same system into this country, and the establishment of a number of law agencies in the district probate registries throughout the provinces, we expect upon the whole it will be found somewhat impracticable and very unsuitable to the notions and habits of Englishmen. Lord St. Leonards' Property Act of two years ago enabled trustees and executors to obtain at chambers in a summary manner, upon a written statement, not only the opinion of a chancery judge, but also his advice or direction on any question respecting the management or administration of the trust property. This was considered at the time a great boon by some short-sighted would-be law reformers; but all lawyers of any experience in such matters knew well enough that, practically, this specious enactment must be a dead letter. Its only effect could be, on the one hand to convert the chancery judges into universal and perfunctory law advisers of all the trustees and executors in the country; or, on the other, to make them discourage parties from coming before them, except after previous advice and consideration, and with cases framed not only to elicit, but to be a record of, the judge's opinion when obtained. Nor is there any ground whatever for supposing that if— notwithstanding the opinion of the House of Lords—a new Court of Appeal in Bankruptcy shall be constituted, the 59th clause which affects to enable everyone of at least 100,000 persons to require the opinion of the chief judge upon every "point" or "matter" arising in the course of the proceedings in which they are interested, will not prove itself to be wholly inoperative and delusive.

The other points touched upon by the Attorney-General related to the criminal jurisdiction of the new court, and the power of the judge to try issues of fact before himself and a jury. As to these points it may be remarked that modern experience has shown, especially in county courts, how rarely the intervention of a jury is sought when it depends upon the option either of the parties or of a judge. But if juries are so very important in some bankruptcy questions, why should not their aid be invoked for the Lords Justices as well as for the new chief judge? and why should not the present Court of Appeal have as much power as the proposed one to punish bankrupts? We altogether agree with those speakers in the debate of Thursday night who considered the new judge as a mere excrescence upon the pending measure, and as involving a large and useless expense. Mr. Bovill well likened the present proceeding to Lord Brougham's project of 1831, which inflicted upon the country a Superior Court of Bankruptcy, originally consisting of four judges, of whom three became pensioned off, leaving a single Chief Judge in Bankruptcy, who was finally abolished from sheer want of business. The lesson which the country was then taught ought not to be yet forgotten; and although a majority of the House of Commons has refused to adopt the amendment suggested by the House of Lords on the united recommendation of nearly every one of their great lawyers, we hope the country may be saved the expense, and the profession the scandal of a new tribunal for which no occasion really exists, and which must necessarily be idle more than half its time.

ON THE LAW OF TRADE MARKS.

No. VII.

(By EDWARD LLOYD, Esq., Barrister-at-law.)

Nature of a Trade Mark in Literary Property not the Subject of Copyright.

We have now to consider those cases in which the use of a particular title or title-page to a book or the use of an author's name, has been restrained by injunction. For such cases, although they can hardly be classed under the strict head of trade-marks, are yet so far similar, that we find the same principles brought to bear in the decisions on them as are laid down in cases of trading.

The first of these cases is *Hogg* v. *Kirby*, 8 Ves. 215, where the plaintiff was proprietor of a monthly magazine published by the defendant, and sold at his shop upon commission. This publication continued during five months, but at the end of that time disputes arose between the parties; it was agreed to discontinue the joint publication, and a final settlement of accounts was had. The plaintiff then circulated advertisements stating that the publication under its old title would be continued by him, and that a sixth number of the magazine would be, as it accordingly was, shortly afterwards published by him. The defendants at once advertised and published the first number of a periodical work under a title similar to the plaintiff's, but described as a "New Series Improved." The injunction applied for was to restrain them from selling any copies of their publication, and from printing or publishing any future or other number either under the same or any similar appellation, and from borrowing and using the title and appellation or copying the ornaments or any part of the plaintiff's original publication. Several circumstances were alleged by the bill to show that the defendant's work was intended to mislead the public to the conclusion that it was a continuation of the plaintiff's; such as the general resemblance, though not an exact similarity of its title-page and wrapper, the continuation in the new magazine of an article left unfinished by the old, and the publication of an index to the first five numbers of the old work, under the name of an index to the first part. This intention was, however, denied by the defendant's answer, which attempted to give a sufficient reason for the steps which he had taken in composing the form and substance of the new magazine, to show that it was not intended by him to represent it to the public as a continuation of the old work, and he submitted that he had a right to publish a work under a similar title. The Court, however, held that upon the facts stated, there appeared to be an intention on the part of the defendant to put his work before the world as a continuation of the old magazine. Lord Eldon there did not rest his decision so much on the ground of copyright or of con-

tract, but relied principally upon that of fraud. After referring to other cases as having been generally where, under colour of a new work, an old work has been republished, and copies multiplied, he proceeds to consider whether the same principles may not be applied to the case before him, and goes on to say,—"In this case, while protesting against the argument, that a man is not at liberty to do anything which can affect the sale of another work of this kind, and that, because the sale is affected, therefore there is an injury (for if there is a fair competition by another original work, really new, be the loss what it may, there is no damage or injury), I shall state the question to be not whether this work is the same; but, in a question between these parties, whether the defendant has not represented it to be the same, and whether the injury to the plaintiff is not as great and the loss accruing ought not to be regarded in equity upon the same principles between them as if it was in fact the same work." What we may gather from this decision amounts to this, that by a certain resemblance of form and matter a publisher may put forth to the public a literary work so as to be taken for another work of established reputation, so that the advantage in the market enjoyed by the original work is fraudulently obtained by the copy; and that this advantage in the market corresponds in some measure with the property created by the Copyright Act, and will be protected by the Court on analogous grounds.

The case of *Spottiswoode* v. *Clarke*, 2 Ph. 154, is of a similar character. There an application to discharge an order of the Vice-Chancellor was granted because the Court was not satisfied that it was a case in which the plaintiff had a legal right against the defendant, so as to justify it in restraining the latter from the sale of his work until the legal right had been established in the proper tribunal. The injunction had been granted to restrain the defendant from selling or exposing for sale any almanacks bound in wrappers or covers with the title "Pictorial Almanack" printed thereon, so as, by colourable representation or otherwise, to represent the almanack published and sold by the defendant to be the same as the almanack printed and sold by the plaintiff for the coming year, with a direction that the plaintiff should forthwith bring an action against the defendant for the alleged colourable imitation of his wrapper. I have (*sup.* p. 540) quoted some of the remarks of Lord Cottenham on this case, showing that the difficulty felt by him was, as to the question whether the legal title of the plaintiff was so clear as to make the interference of a court of equity by injunction the most reasonable course. The following remarks of his lordship are, however, worthy of notice:—"In the course of argument, cases of trade-marks were referred to; but trade-marks have nothing to do with this case. Take a piece of steel; the mark of the manufacturer from whom it comes is the only indication to the eye of the customer of the quality of the article; so it is of blacking, or any other article of manufacture, the particular quality of which is not discernible by the eye. But these cases are quite different from the present case, in which, if you are deceived at all, it is not by the eye; the size, the colour, the engravings, are all different in the two works, so that no one who sees the two could mistake the one for the other." In this last remark, I imagine, lies the whole gist of the question; where the alleged imitation is such that a person cannot detect the difference between two works without a critical examination of the style and title of each; perhaps even where a casual observer would probably be induced to purchase the imitation in the place of the original, then the principle laid down in cases of trade-marks is applicable, and the use of a particular name, title, or wrapper will be restrained.

There is a remarkable case of *Lord Byron* v. *Johnstone*, 2 Mer. 29, the principle of which, it seems to me, to be somewhat difficult to reconcile with the decision in *Clark* v. *Freeman*, 11 Beav. 112. In the former case the defendant, a publisher, advertised for sale certain poems which he represented by the advertisement to be the work of Lord Byron, on whose behalf a bill was (during his lordship's absence abroad) filed to restrain the publication under the title described in the advertisement. There appears to have been some doubt at the time of original application whether or not the poems were Lord Byron's, but when the defendant at the hearing declined to swear as to his belief that the poem in question was actually the work of Lord Byron, the Court granted the motion for an injunction until answer or further order. Now, is not this something like recognising a proprietary right in a mere name? At any rate, it goes so far as to grant relief against damage arising from the use of a particular name in conjunction with a particular article offered for sale; it being impossible for the purchaser to ascertain on inspection the truth or falsehood of the representation on the faith of which he buys the article. In *Clark* v. *Freeman*, as I have before remarked (*sup.* p. 487) it was held that Sir J. Clark had no property in his name such as would be liable to damage from the unauthorized use of it by the defendant, as a puff to recommend his consumption pills. The only distinction, therefore, which I can draw between the two cases, that in the former the author must be held to have a species of property in his name, consisting in the recommendation to the public, which the use of that name gives to the sale of a literary work; if Sir J. Clark had been in the habit of selling medicines, or of deriving a profit from the sale of medicines, it might have been argued that by the piracy of his name, his trade had suffered injury; but the Court would not recognise an injury done to his reputation, which it treated as an illusory damage; it must, therefore, have held in the former case that the author has a species of interest in his name quite similar to that of a trader in his name or mark affixed to the articles of his manufacture.

From the general considerations, therefore, brought forward in these cases of literary works, I think we may fairly conclude that an author or publisher has, either in the title of his work, or in the application of his name to that work, or in the particular external marks which distinguish it, just such a species of property as a trader has in his trade-mark, and may equally claim the protection of a Court of Equity against such a use or such an imitation of that name or mark as is likely, in the opinion of the Court, to be a cause of damage to him in respect of that property.

The Courts, Appointments, Promotions, Vacancies, &c.

SUMMER ASSIZES.

HOME CIRCUIT.—CHELMSFORD.

July 15.—The commission for the county of Essex was opened in this town to-day by Mr. Justice Williams and Mr. Justice Blackburn. Eleven causes were entered for trial, two of them being special jury causes.

MIDLAND CIRCUIT.—LEICESTER.

July 13.—The commission was opened in this town to-day by Mr. Justice Willes. There were only two causes set down for trial.

NOTTINGHAM.

July 17.—The Lord Chief Baron opened the commission in this town to-day.

NORFOLK CIRCUIT.—BEDFORD.

July 15.—The commission was opened in this town to-day by Mr. Justice Wightman

SOUTH WALES CIRCUIT.—HAVERFORDWEST.

July 11.—Mr. Justice Crompton opened the commission here on this day. There was not a single cause entered for trial.

MIDDLESEX SESSIONS.

At the close of their duties on the 15th instant the grand jury handed to the judge the following protest:—"The grand jury cannot separate without expressing their opinion that no necessity appears to them to exist for the continuance of the duties of the grand jury, all the cases laid before them at this session having already been fully investigated by a stipendiary magistrate, and which preliminary inquiry appears to them all sufficient (checked as the absoluteness of the power is by the press) to preserve a prisoner from being unduly or unfairly placed on his trial, without the intervention of a grand jury, the machinery of which seems to be useless for the purpose of justice, and alike troublesome and expensive to prosecutors, witnesses, and jurymen."

On Thursday evening, at a parliament held, after many adjournments, Mr. Edwin James, Q.C., was disbarred by the benchers of the Inner Temple, and that fact was ordered to be communicated to all the judges of law and equity, and the other three inns of court.

Mr. William Thrush Jefferson, Northallerton, Yorkshire, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women in and for the North Riding of the county of York.

Parliament and Legislation.

HOUSE OF LORDS.

Monday, July 15.

ADMINISTRATION OF JUSTICE IN IRELAND.

The Marquis of CLANRICARDE rose to move an address to the Crown for the appointment of a commission to inquire into the constitution, practice, and procedure of the common law and equity courts in Ireland. He complained that the reform of the practice and procedure of the English courts had not been extended to the Irish courts. The result was not only a great waste of money and time to suitors in Ireland, but an extravagant expenditure of public funds, for the judicial establishment was overgrown, and out of all proportion to the work it had to perform. The value of property assessed to the income-tax in England exceeded £246,000,000. The value of property so assessed in Ireland, where the population was, he believed, about 7,000,000, was only £22,000,000. He wished to call particular attention to the fact of the existence of three masters, performing judicial duties, when those offices had been practically abolished in England. How extravagant the staff of equity judges in Ireland was appeared by a comparison of the business of those courts with the business of the equity courts in England. The total amount of money paid out of the English Court of Chancery in 1859, was £14,185,035. The amount paid out of the Irish Court of Chancery was £1,145,000, or about one-fourteenth. The cash, stocks, and securities, held by the Court of Chancery in England amounted in October, 1858, to nearly £53,000,000. The cash, stocks, and securities, held by the Court of Chancery in Ireland, amounted on the 1st of January last to nearly £4,000,000. The amount of business in the Irish court was infinitely inferior to that of the English court, and yet the cost of administering property in the English Court of Chancery was little more than one-third that of the Irish court. The expenses of the common law courts had increased in proportion as the business had decreased. The staff was larger than necessary, for, while there were only 15 common law judges in England, there were 12 in Ireland. These 12 might safely be reduced to 9, and instead of six circuits, four circuits would be quite sufficient. As far as he could make out, two puisne judges in England did as much work as nine puisne judges in Ireland. In England the number of orders made in chambers in 1859 was 44,870, of which 41,325 were made without the attendance of counsel, the number of chamber orders made in Ireland in 1860 were 1,782, of which a few more than 100 only were made without the attendance of counsel. In 1851 the number of judgment cases entered in the three law courts in Ireland was 7,229, at a cost to the public in salaries and emoluments of £17,759, while in 1859 the number of cases and judgments entered had dwindled to 3,421, and the expense had risen to £22,399. The only objection which he could conceive to the motion was that it would be unpopular with the profession in Ireland, as it would diminish the number of places; for there could be no doubt that the effect of new regulations in the law courts would be to diminish the amount of public money expended on the staff of these courts, and the number of fees uselessly paid. He did not believe that any Irish lawyer worthy of his profession would take such an objection. His object was to raise the Irish bar. He moved that an humble address be presented to her Majesty, praying that her Majesty would be graciously pleased to issue a royal commission to inquire into the constitution, establishment, practice, procedure, and fees, of the superior courts of common law in Ireland; and the differences between the constitution and the forms of practice, procedure, and fees of the Courts of Chancery of England and of Ireland.

Lord WENSLEYDALE supported the motion.

Earl GRANVILLE admitted that a clear case had been made out for inquiry in this matter, and he, therefore, on the part of the Government, would make no opposition to the motion.

Lord BROUGHAM said that nothing could be more necessary than the issuing of this commission, but there was one part of the subject which required an inquiry, he meant the subject of judicial statistics. Whether the laws and the practice of the two countries required assimilation might demand investigation, and in all possibility legislative interference, but a system of judicial statistics ought to be extended to Ireland, as it had been to Scotland and to England.

After a few words from the Marquis of CLANRICARDE in reply,

The motion was agreed to.

Thursday, July 18.

EXAMINATION OF DEFENDANTS IN CRIMINAL CASES.

Lord BROUGHAM, in presenting a petition from Mr. Blundell on this subject, said he had always desired to extend to criminal trials the great improvements which had been introduced with regard to civil actions, in which the examination of the defendant was not only permitted, but in some instances had now been rendered compulsory. He would not make it imperative upon the accused to give evidence, but he would permit him to do so in case he thought proper; and the fact that the defendant either did or did not submit himself to cross examination was fairly entitled, in his opinion, to weight with the jury. The facts disclosed in the petition which he had presented strongly illustrated the necessity for such a change in the law. Mr. Blundell, in his endeavours to improve the administration of the county court, became involved in a correspondence which, it was alleged, partook of a libellous tendency. Proceedings were taken against him, and Mr. Blundell offered to deposit £100, to cover the costs of his adversary, if he would allow the action to be brought in a shape which would admit of his being examined. That proposition, however, was declined, and an indictment was brought against him not only for libel, but for an attempt to extort money. The latter part of the case broke down, and an acquittal was directed; but the charge of libel was persevered in, and as Mr. Blundell was unable to be heard in his own defence, he was convicted. His only remedy, as he was advised, was to prosecute his opponent, who would in turn be debarred from giving evidence in his own behalf. Mr. Blundell complained of this state of the law of libel, and asked that defendants might be heard in their own behalf. For his own part, he would be prepared to go further, and to extend the principle to all criminal cases.

HOUSE OF COMMONS.

Tuesday, July 16.

THE BANKRUPTCY BILL.

Lord PALMERSTON: I promised to state to the House this afternoon what course we mean to pursue in regard to the Bankruptcy Bill. There are three main points in which the Lords have made amendments to that Bill. One is as to the appointment of the judge; another is the substitution of official assignees for the creditors' assignees; and the third is as to the retrospective operation of the Bill. What we mean to re-

commend to the House is to agree with the Lords' amendments in regard to the judge; in regard to the assignees, we must prefer the creditors' assignees. We have no proposal to make to the House in regard to the third point.

Wednesday, July 17.

CRIMINAL PROCEEDINGS OATHS RELIEF BILL.

The adjourned debate on the question that the House go into committee on this Bill was resumed by

Mr. DENMAN, who observed that the exact words employed in the Common Law Procedure Act had been introduced into the Bill, and that it had no other object than to carry out in criminal cases what was now the law in civil cases—to give the judge power to exempt persons from taking an oath who had a religious objection to so doing. The evils of the present system were that it oppressed tender consciences, and operated against the administration of justice; for cases occurred in which witnesses went to prison rather than give evidence on oath, and thus known criminals sometimes escaped conviction. As an illustration of the power of conscience in reference to oaths, he mentioned the case of a respectable lady who was a witness for the plaintiff in a case at the Lewes Assizes, and who was sent to prison because she refused to take the oath. So impressed was this lady that she had been the cause, though innocently, of the plaintiff losing his case, that she sent him a check for the full amount of the debt he had sued for. He hoped the House would observe that the Bill only referred to persons who had a religious objection to taking an oath.

The House then went into committee, when the clauses of the Bill were agreed to.

INDICTABLE OFFENCES (METROPOLITAN DISTRICT) BILL.

The adjourned debate on this Bill was postponed until the 24th inst.

Thursday, July 18.

TRADE MARKS BILL.

Mr. HADFIELD asked the right hon. gentleman the President of the Board of Trade whether he intended to proceed with this Bill.

Mr. M. GIBSON replied that, as it stood, the Bill would give rise to great discussion, and it was not likely that it could be passed through the House this session. Considerable difference of opinion existed as to what the precise provisions of a Bill to prevent the forging of trade marks should be. The subject had never been referred to a select committee. It was, therefore, thought advisable that the Bill should be brought in the first thing next session, and referred to a select committee. The right hon. gentleman then moved that the order for going into committee on the Bill be read, for the purpose of being discharged.

The order was accordingly read and discharged.

HIGHWAYS BILL.

Mr. DEEDES stated that the Highways Bill had, since the 2nd of March, stood on the business paper no less than twenty-five times, and it would be a matter of great convenience to know when the Bill would really come on, for it had stood for to-morrow, but had been put off.

Sir G. LEWIS said, that the Bill now stood for Tuesday, at twelve o'clock, and he hoped to be able to bring it on then.

BANKRUPTCY AND INSOLVENCY BILL.

On the order for considering the Lords' amendments of the Bankruptcy and Insolvency Bill,

The ATTORNEY-GENERAL moved that the House disagree to the amendments in the preamble and other parts of the Bill which related to the appointment of a chief judge of the Court of Bankruptcy. He examined and discussed the reasons which he understood had been assigned for the rejection of the clauses creating a chief judge, and urged the great increase of business that would devolve upon the Court of Bankruptcy by the abolition of the Insolvent Debtors' Court; and that, besides the appellate jurisdiction and duties in the Court, there were duties in chambers which required a judge of that character, who, by the 67th clause, as it originally stood, was empowered to try questions of fact at once by a special jury,—a great advantage in proceedings in bankruptcy. The Court would likewise be authorised to determine differences arising under deeds of arrangement, and to exercise novel powers in criminal jurisdiction,—offences new to our commercial code being introduced into the Bill—which were not entrusted to judges of a rank inferior to that which it was proposed to give to the Chief Judge of the Bankruptcy Court. In conclusion, he observed that it was impossible not to see that if the Bill passed without the judge clauses, in all probability parts of the measure that would have worked well with them would not work satisfactorily, and discredit would thus be entailed upon the Bill.

Mr. BOVILL, after remarking upon the great weight of legal authority in favour of excluding the judge clauses, and, upon the assent, tacit or expressed, to the same effect, of a large portion of the mercantile community, reminded the Attorney-General that the duties which he had elaborately detailed as appertaining to the chief justice might be performed by the Commissioners of Bankruptcy. The Bill had proposed to give £5,000 a-year to a new judge to perform a duty which up to the present time had been performed by a satisfactory tribunal; to transfer to a single judge functions now executed by the two lords justices. The Attorney-General had calculated upon an increase in the number of appeals; but was a new judge, with £5,000 a-year, to be appointed because there might be an increase in the number of appeals? If there should be an increase, what was easier than for the lords justices to have the assistance of one of the Vice-Chancellors or the Master of the Rolls? After replying to other arguments of the Attorney-General he saw no reason, he said, for dissenting from the opinion of the Lords.

Mr. COLLIER was of opinion that the House of Commons was right in providing a superior judge for the new Court of Bankruptcy.

Mr. MALINS stated the grounds upon which he thought it was not only essential that the chief judge should be retained, but that without a chief judge the measure would be worse than worthless. The present system had worked badly, and instead of being patched up, as Mr. Bovill recommended, he was of opinion it should be replaced by a new one. Unless the Bill created a good commercial court the House had been troubled in vain.

Mr. ROLT thought it would be wise to agree to the Lords' amendment, because it was most unwise to be tampering year after year with an important tribunal, making changes all but avowed not to be final but temporary, with a view to expediency, and going backwards and forwards. It would be far better, in his opinion, to continue the present system a little longer.

Mr. TURNER admitted that there existed in Manchester, as in Liverpool, a great diversity of opinion on the subject of a chief judge. He thought the appointment of a chief judge would be a great improvement, and should vote for the original proposition.

Mr. HENLEY observed that the real question was whether sufficient judicial power was now at command for the appellate jurisdiction. If it was, all agreed that it was a good and satisfactory tribunal, and if, when tried, it was found not to be able to do its work, a judge could be added; but if a judge was appointed before trial, and he was found to be unnecessary, he could not be got rid of. He believed, as well as others, that the present judicial power was sufficient.

Mr. WALPOLE said one thing was clear—that in introducing such a great alteration of the law, there should be a superintending judge; but he was bound to ask himself the question whether, this being a tentative measure, and future legislation might be necessary, was it right or not to saddle the country with a new judge, with £5,000 a-year, unless it was tolerably certain that a new judge would be required? His opinion was that this superintending control might be obtained by engrafting the jurisdiction upon the Vice-Chancellors, in order to see how the experiment worked.

The SOLICITOR-GENERAL observed that the chief judge had been regarded only as a judge of appeal; but he was to have had a large amount of original jurisdiction. In the clauses relating to the discharge of bankrupts the whole commercial morality of the kingdom was confided to the chief judge, and the effect of the Lords' amendments was to throw this important function back upon the Commissioners in Bankruptcy.

Sir H. CAIRNS said he dissented from the opinion that the appeals under the Bill would increase; but, assuming that the number would be doubled, the present appellate tribunal, the Lords Justices, would be able to dispose of them without delay, there being at present no arrears.

Upon a division, the House disagreed with the Lords in their amendment of this part of the Bill, by a majority of 44, the numbers being—ayes, 173; noes, 129.

The consideration of the other amendments was postponed, the debate being adjourned until Monday.

Recent Decisions.

EQUITY.

RIGHTS OF CESTUIS QUE TRUST ON FRAUD BY ONE WHO IS TRUSTEE UNDER TWO TRUSTS.

Case v. *James*, L. C. & LL. J., 9 W. R. 771.

In this case the plaintiff and T. were trustees of a sum of stock, which we will call *a*. T. was trustee for the defendants of another and rather larger sum of stock which we will call *b*. This sum he had applied to his own purposes. As the defendants made searching inquiry after their fund, T. resorted to the following contrivance:—He forged a deed of mortgage to himself, and persuaded the plaintiff to join with him in advancing fund *a*. on the security of an assignment of this fictitious mortgage. Accordingly, fund *a*. was transferred by the plaintiff and T. into the name of T. alone; and the mortgage was assigned by T. to the plaintiff. A few days afterwards T. invested in the same stock a small sum which with fund *a*. made up the amount of fund *b*.; and he then announced to the defendants that their fund was standing in his name upon the trusts thereof. The defendants ascertained that the fund was so standing, and placed a *distringas* thereupon. T. having died insolvent, the fraud practised by him was discovered, and the plaintiff, on behalf of his *cestuis que trust*, now claimed out of the stock standing in T.'s name the amount of fund *a*., insisting that to that amount the stock was earmarked, and that it never lost the character of being the trust fund of the plaintiff's *cestuis que trust*. The Master of the Rolls, before whom the case originally came (9 W. R. 528) treated the suit as if all the *cestuis que trust* as well as the trustee were plaintiffs in it, and he held that they were not entitled to any relief. He relied upon the authority of *Thorndike* v. *Hunt*, 3 De G. & J. 563; s. c. 7 W. R. 246, in which his own decision had been reversed, as strictly applicable to the case before him. In the case to which he referred a trustee of two different settlements having applied to his own use a fund subject to one of the settlements, replaced it by a fund, which, under a power of attorney from his co-trustee under the other settlement, he transferred into the names of himself and his co-trustee under the former. In a suit in respect of breaches of trust of the former settlement, the trustees of it transferred the fund thus replaced into court on a motion. It was held that this transfer was equivalent to an alienation for value without notice, and that the *cestuis que trust* under the other settlement could not follow the trust fund. Lord Justice Knight Bruce, in that case, said that an order had been made directing the defendants, the trustees, to transfer the fund admitted to be in their hands into court, for the purposes of the cause. Thereupon a transfer was made, and the legal title to the fund became vested in the Accountant-General, for the purposes only of the cause. In the case before him, the Master of the Rolls thought that the only difficulty arose from the circumstance that T. was sole trustee for the defendants. If another person had been associated with him, and the stock had been transferred into their joint names, there could not have been any question about the matter. But his Honour considered that what was actually done equally amounted to a disposition of the fund to a *bonâ fide* purchaser, without notice of the fraud committed against the plaintiff. The addition of a small sum to make up the amount of fund *b*., and the declaration of trust extending to the whole fund, were equivalent to a transfer into the name of a trustee for the defendants. Up to that time the plaintiff might have recovered the fund, but by the declaration of trust T. transferred it "from his own name as beneficial owner into his own name as trustee for the defendants." In answer to the argument that T. was a trustee of the fund, for the persons represented by the plaintiff, and that a trustee cannot transfer a trust fund from one set of *cestuis que trust* to another, his Honour observed that in the proper sense of the term T. was not a trustee of the fund for those persons, because the original trust had been discharged. The bill, therefore, was dismissed. When the case came before the full Court of Appeal, the late Lord Chancellor declined to look at it as if the *cestuis que trust* of fund *a*. as well as the trustee were plaintiffs. He said that the only parties before the Court were the plaintiff and the *cestuis que trust* of fund *b*., and he asked on which of those two parties ought the loss to fall? Clearly on the plaintiff, who confessed that he had committed a breach of trust, and not on the defendants, to whom no *laches* or incaution could be imputed. Therefore, without entering into the controversy between one set of *cestuis que trust* and the other, his Lordship thought that the bill ought to have been dismissed.

The same view was adopted by Lord Justice Knight Bruce. "It is now contended," said he, "that those who were active and correct in the assertion of their rights should lose the benefit of their regularity and diligence in favour of one who, when not inactive, was only active erroneously and mischievously." His Lordship thought the bill was properly dismissed; but he expressed no opinion whether it would have been proper to dismiss it if the *cestuis que trust* had been parties to it. Lord Justice Turner intimated doubt both as to the view taken by the other members of the Court, and as to that on which the Master of the Rolls had proceeded. His Lordship was not satisfied that the plaintiff was not entitled to maintain the suit in his character of trustee notwithstanding the breach of trust which he committed in transferring the stock. His doubt arose upon the case of *Franco* v. *Franco*, 3 Ves. 75, where the bill was by one trustee of stock against the other to compel him to replace it or give security according to his engagement, the plaintiff having joined in transferring the stock into the defendant's name, and a demurrer on the ground that the *cestuis que trust* were not parties was overruled. This case had been followed in two later cases by Vice-Chancellor Knight Bruce. In one of them, *May* v. *Selby*, 1 Y. & C. C. C. 235, it was held that a trustee might file a bill against his co-trustee to recover the trust fund without making the *cestuis que trust* parties. In the other case, *Bridget* v. *Hames*, 1 Coll. 72, the bill was by a trustee against one of several *cestuis que trust* to recover the trust securities which he had got into his hands, and it was held that the other *cestuis que trust* were not necessary parties. It is believed that the other cases referred to by his Lordship are of less immediate application to the point in question than those of which we have above stated the effect. Upon those cases it is obvious to remark that there may be a great difference between a bill by the deluded against the deluding trustee, and a bill which seeks to throw upon innocent parties the consequences of the deluded trustee's error. The cases cited would be authorities for this, that the plaintiff might, during his fraudulent co-trustee's life, have filed a bill against him to have the fund brought back into their joint names without making the *cestuis que trust* parties; but they do not seem to establish that the plaintiff was entitled to have his present bill looked at exactly as if it were the bill of the *cestuis que trust*, which was the view taken of it by the Master of the Rolls. The equity of the defendants as against the negligent trustee, might very well be higher than as against the innocent beneficiaries, and there appears to be no sufficient reason for depriving the defendants of any legitimate defence which they might make to any bill brought against them. Upon the larger question in the case, Lord Justice Turner expressed dubiously an opinion opposite to that of the Master of the Rolls. He thought it doubtful whether the trust in the fund which we have called *a*. could be defeated "whilst the fund remained vested in T., and he continued to be a trustee under the testator's will." It will be observed that the Lord Justice does not say "continued a trustee of the fund," but "under the will," so that he avoids the force of the declaration of trust in favour of the defendants relied on by the Master of the Rolls. It appears that T. was, until his death, looked upon by the parties interested in what had been fund *a*. as their trustee jointly with the plaintiff. There is great force in the concluding observation of the Lord Justice. "I am not," said he, "as at present advised, prepared to hold that the *cestuis que trust* under the will were not entitled to place confidence in their trustees, or were bound to take any proceedings for securing the fund against their acts, or that any priority could be gained over them by reason of their not having taken such proceedings by such proceedings having been taken on the part of the defendants to this suit." Although the Lord Justice expressly stated that he gave no final opinion on the case, it may be expected that what he did say will encourage the filing of another bill, which will be ostensibly the bill of the beneficiaries, although, perhaps, really the bill of the trustee, and in which it will become the duty of some judge or court to decide the difficult and important question, on one side of which we have the elaborate judgment of the Master of the Rolls and on the other the doubts difficult of solution propounded by Lord Justice Turner. The case is not the less interesting because it arises upon the application of general principles of equity and not, as many cases do, out of the artificial and gratuitous ambiguities of our law.

REAL PROPERTY AND CONVEYANCING.

PRIORITY OF INCUMBRANCES ON LAND IN MIDDLESEX AND GENERALLY.

Benham v. *Keene*, V. C. W., 9 W. R. 765.

(*Continued from p.* 631.)

Besides the two points which we last week noticed as arising in this case, there was a third which may still, perhaps, deserve a brief consideration. The question between A., the first judgment creditor registered in the Common Pleas, and B., the first judgment creditor registered in Middlesex, was decided, as we saw, in favour of B., and it was held that notice was immaterial. Subsequently to these judgments, the debtor conveyed to C., and C. mortgaged to D. Now, assuming that D. had notice, as was alleged, of A.'s judgment, it might be contended that that judgment, although not registered in Middlesex, must prevail against D. This contention appears to be supported by the passage which we last week quoted from Sugden's "Vendors and Purchasers," 13th edit., p. 599, "a purchaser (of land in a register county) may in equity be bound by a judgment or a deed although not registered." Supposing it to have been adopted by the Court, A. would gain priority over D. But our first point last week was, that A. must be postponed to B.; and our second point was, that B.'s judgment was void as against D. for want of re-registration after five years. In this state of things, it was contended by A.'s counsel that, assuming his priority over D., he was entitled to stand in D.'s place as against B., and thus escape, to the extent of the amount of D.'s charge, the effect of the decision postponing him to B. Vice-Chancellor Wood denied that this consequence would follow, even if the preliminary claim raised by A.'s counsel were admitted; and it therefore became unnecessary to consider the admissibility of that claim. His Honour said that it was clear upon the facts that B.'s debt, which had priority to A., would exhaust the estate, and he knew no principle on which A. could claim the sum which D. was entitled to claim as against B. The argument on behalf of A., when reduced to its simplest form, stands thus:—It is true that B. ranks before A., but A. ranks before D., and D. ranks before B., and therefore A. ranks before B—on argument which seems equally effective, whether turned one way or the other. The order of priority stated by the Vice-Chancellor was thus:—D.—B.—A.—C.

A perusal of this case and of the authorities referred to in it will introduce the student to perhaps the most bewildering maze of entanglement which English lawyers and legislators ever contrived to weave. The enacting of the 1 & 2 Vict. c. 110, and the amending and explaining Acts, while the Middlesex Registry Act was left untouched, is, we think, an unsurpassed example of skill in the art of complication.

COMMON LAW.

DONATIO MORTIS CAUSA—NATURE OF

Witt v. *Amis*, Q. B., 9 W. R. 691.

That particular species of gift which is named by the civilians a *donatio mortis causâ*, is said by Blackstone to arise when a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered to another, *the possession of any personal goods* to keep in case of his decease; upon the implied trust, nevertheless, that if the donor lives, the property thereof shall revert to himself. Other authorities show that in all cases the donation, to be effectual against the personal representatives of the donor or next of kin (for against his creditors it never prevails if the assets be otherwise deficient), there must be a *delivery* either of the thing itself or (if it be in action and not in possession) of the instrument by which it is secured, the personal representative of the donor being, in the latter case, bound to put the instrument in suit for the benefit of the donee (see *Duffield* v. *Hicks*, 1 Bligh N. S. 497.) In the present case, the gift in question was of a policy of assurance, and the point was whether such an instrument could be the subject of a *donatio mortis causâ*. A case very similar was decided by the Master of the Rolls in the year 1859, in favour of the affirmative of this proposition. There some promissory notes, payable to the donor or order, and *not endorsed*, were given to the donee, with an injunction not to examine them till after the donor's death, who, though ill at the time, lived for three months afterwards. This was held to be a valid gift of the description under discussion, for it was observed by the Court that the beneficial interest in a *bond* had been already decided to be so transferable; and that there was no sound distinction to be drawn between the two classes of instruments. The Court of Queen's Bench has now decided in the same way, and therefore it may now be taken as established law that the donation before death of any security for money, which the donor intends to be complete and sufficient will be upheld against the personal representatives or next of kin, although some technicality may have been omitted; as, for an example, an actual endorsement by the donor where endorsement is required by law.

It may be worth while to remark here, that a *donatio mortis causâ* as it is in the nature of a legacy, so (under 36 Geo. 3, c. 52, s. 7, and 8 & 9 Vict. c. 76, s. 4) it is expressly made subject to legacy duty: and also, in reference to the delivery required to the donee, that the gift is void if, at any time before death, the possession be resumed by the original owner. See *Bunn* v. *Markham* (7 Taunt. 224).

ACTION FOR MALICIOUS PROSECUTION—REQUISITES OF THE SUMMING-UP BY THE JUDGE.

Payne v. *Revans*, Q. B., 9 W. R. 693.

This case is a striking illustration of the essentiality of malice, or rather of the assertion of malice by the verdict of a jury, to the successful maintenance of an action for a malicious prosecution. In summing up the case to the jury the judge must in express terms require them to give their opinion upon this point, or the trial will be set aside. It will not even suffice to put to them such questions as will raise by their answers a presumption as to the belief entertained by the jury with regard to the existence of malice. Thus, in the present case, where the defendant had caused the plaintiff (who had become insolvent immediately after receiving certain goods from the defendant) to be apprehended on a charge of obtaining them under false pretences, one of the questions put to the jury was "did the defendant really believe that he had good grounds for charging the plaintiff with obtaining the goods by false pretences?" The jury said that he did so believe—thereby pretty clearly indicating their persuasion that there was no malice on the part of the defendant. Yet the Court made an absolute rule for a new trial, and this though the rule *nisi* which had been granted was not for a new trial on the ground of misdirection, but a rule for the entering of the verdict for the defendant in pursuance to leave reserved at the trial. The Court, moreover, imposed on the defendant the costs of the second trial; but this probably was because (as may be collected from the report) the defendant *gave credit* to the plaintiff in parting with the goods in question, and did not treat him merely as an agent in the transaction—a fact which seems (notwithstanding the verdict of the jury) somewhat inconsistent with any reasonable belief that the goods had been obtained by the plaintiff on the false pretences charged—namely, that he knew a third party by whom the goods would be purchased.

PUBLIC TRUSTEES—NON-LIABILITY OF FOR NEGLIGENCE OF WORKMEN.

Holliday v. *The Vestry of Shoreditch*, C. P., 9 W. R. 694.

The position of persons who, as trustees or otherwise act gratuitously for the public benefit, with reference to the negligence of those employed under them, is naturally one which has been frequently discussed and which gives rise to questions of considerable interest. The general rule as to the responsibility of employers does not here obtain, by reason rather of an arbitrary interference by the law in favour of persons who fill posts of such utility, than of any legal principle. With regard, however, to the existence of an exception in their favour to the maxim *respondeat superior* (applicable to all other cases of master and servant), there is no room to doubt; and Chief Justice Erle's judgment in the present case contains a lucid history of the course of judicial decisions on the point, the voluminous character of which may be judged of from the fact that no fewer than 18 cases were cited *arguendo* by the counsel of one of the parties. One of these, *Hall* v. *Smith* (2 Bing. 156), lays down the proposition that no action can be maintained against a man acting gratuitously for the public, for the consequence of any act which he was authorised to do, and which, so far as he is concerned, is done with due care and attention, and that such person is not answerable for the negligent execution of an order properly given; and we learn from the judgment already referred to, that this doctrine was solemnly affirmed by the House of Lords in the case of *Duncan* v. *Findlater* (6 Cl. & Fin. 894.) The cases (and they are numerous), which at first sight seem inconsistent with this law

will be found on examination to be decided against the defendants, by reason of their having (though it may be indirectly) received a profit from the public undertaking with which they were connected.

Correspondence.

IRISH ANTE-UNION STATUTES.

There occurs in the *Journal, ante*, p. 611, the following statement, "As English courts do not take judicial cognizance of Irish statutes passed before the Union, which must, therefore, be proved to those courts as facts, an Irish barrister deposed as to the effect of the Irish law in invalidating mixed marriages, and that the Act of George 2 was still, as regards the parties to such marriages, unrepealed." Mr. Reilly, in his letter, *ante*, p. 632, which comments upon this statement, quotes it as far as the word "deposed," and then assumes that the legal witness was called to prove the passing of the 19th Geo. 2, c. 13. The Act 41 Geo. 3, c. 90, to which Mr. Reilly refers, renders a copy of an Irish Act passed before the Union, printed and published by the King's printer, conclusive evidence of the passing of such Act. Further proof, therefore, of the passing of such an Act would have been unnecessary. But in the case at Warwick sessions, it was incumbent upon the appellants to prove not only the passing of the Irish Act referred to, but also the construction of that Act, and its force at the present time; in short, the present state of the Irish marriage law as regards mixed marriages by a Roman Catholic priest. If the justices then present read over the indexes of all the Irish statutes passed from the 19th Geo. 2, c. 19, down to the year of the Union, they would have seen that the last-mentioned statute was not repealed by the Irish Parliament. But this perusal would have occupied the Court a considerable time; and, even after such an examination, they would have been unaided as to the construction of that Act.

The statute to which Mr. Reilly refers merely affirmed the rule of international law, which permits foreign laws to be proved "by authenticated copies;" Story's Conflict of Laws, p. 1012. In *Ennis* v. *Smith*, decided by the Supreme Court of the United States, 14 Howard, 400, Amer. Rep., a copy of the Civil Code of France, purporting to have been printed at the royal press, Paris, was held admissible as evidence of the law of France. The Act, 41 Geo. 3, therefore, involved no new principle of evidence. It would have been very different if it had enacted that English courts should take judicial cognizance of Irish statutes. When proof of an Irish statute is made by the production of a copy printed by the King's printer, (which was done at the Warwick sessions), the Court may then examine any other evidence it may choose, in order to ascertain the construction of such a statute. It is the more necessary for parties who have to prove not merely the passing of a particular Act, but the present state of the law, to produce skilled evidence when the question which is to be determined is the construction given to a foreign statute *in* a foreign country. It was to meet such cases that the statute 22 & 23 Vict. c. 63, which was intended to facilitate the ascertainment of the law of one part of her Majesty's dominions by the courts of another part, and which is commented upon in your *Journal, ante*, p. 522, was passed. The construction given to a foreign statute in a foreign country is to be determined not by the Court but by the jury; *Holman* v. *King*, 7 Met. 384, Amer. Rep.; Story's Conflict of Laws, p. 1011; although the general rule is, as stated in the *Journal, ante*, p. 521, that foreign laws should be proved as facts to the court. It can hardly, therefore, be supposed that the appellants in the case at Warwick sessions erred from excess of caution in producing proper oral evidence of a matter which partakes so much of the nature of an issue in fact, or that the remarks in the *Journal* were deficient in necessary criticism of that case. M.

The Provinces.

BOLTON.—At the Town-hall, Bolton, a case came on for hearing on Monday last, involving a very knotty question, as to whether a cart laden with lime, intended for agricultural purposes, is liable to pay toll. It appeared that on the 29th ult., James Bromiley, of Horwich, passed through the Lady-bridge toll-bar, near Bolton, with an empty cart, and returned laden with lime, which he said was for tillage for the land. When going through with the empty cart he paid the toll, one shilling, and on his return he expected the toll to be returned, it not being considered legal to take toll for lime when intended for the improvement of land; but the tollkeeper refused to return the money. A summons was taken out charging him with taking illegal toll.—Mr. Edge, solicitor, appeared for complainant.—Mr. Hall, for defendant, said they were entitled to charge for lime, it not being exempt, and referred to the various Acts of Parliament. By 3rd & 4th George 4, cap. 126, sec. 32, no toll was to be demanded for any cart conveying manure, soil, compost, dung, &c., (save and except lime). Difficulties afterwards arose, and 4th & 5th George 4, cap. 16, sec. 1, was passed, which stated that lime for the improvement of land should be exempt. Still greater difficulties arose, and another Act was passed, 5th & 6th William 4, cap. 18, sec. 1, enacting that, as disputes had arisen about conveying manure for the improvement of land, from the 1st January, 1836, no toll should be demanded for manure, &c., again excepting lime. By the 3rd & 4th Vict., cap. 51, sec. 1, which was intended to amend the former Acts upon the question of conveying lime, it is enacted that no toll shall be chargeable for lime when the local Act says it shall not be chargeable. And by the 13th and 14th Vict., cap. 79, lime was again made liable, notwithstanding anything said in either any local or general Act; but, in defiance of all claims by mortgagees or others upon the rent-charges of the tolls, it further provides that the trustees of the turnpike shall have power to take the toll of lime, if they think fit, leaving the power entirely in their hands; and in this case the trustees have not chosen to make lime exempt from toll, and there was nothing in the local Act for that road which related to lime, either that they should take toll or otherwise. Accordingly the magistrates decided for the defendant.

Foreign Tribunals and Jurisprudence.

FRANCE.—A technical decision of some interest was recently given by the Court of Cassation; it was to the effect that simple falsehood is not sufficient to constitute the "fraudulent manœuvre" which Art. 405 of the Penal Code declares to be an essential element in swindling, but that it must be accompanied by circumstances which influence the person duped. In virtue of that definition the Court quashed a condemnation of six months' imprisonment pronounced on one Duval by the Imperial Court of Caen, for swindling, under these circumstances:—A young man who owed him money was lodged in the Debtors' Prison at Caen by another creditor; and he (Duval) went to the young man's mother and representing himself to be the detaining creditor, obtained from her a guarantee of the debt, subject to the condition of his releasing the young man. The Court decided that though what he had done was blameable, it was not a "fraudulent manœuvre," within the meaning of the Penal Code.

The French law is very severe on persons who take girls under age from their parents, even when the girls themselves are perfectly willing to go. A young man named Guillard aged 20, clerk to a huissier, at La Villette, was recently condemned by the Tribunal of Correctional Police to a year's imprisonment for having received into his lodging, and kept for three days, a girl, aged between 15 and 16, named Faure and yet it was found that not only did she go of her own accord, but that it was by advances which she made that the young man became acquainted with her.

Review.

A Treatise on Facts as Subjects of Inquiry by a Jury. By JAMES RAM, of the Inner Temple, M.A. Cambridge, Barrister-at-Law. Maxwell. 1861.

This book is called a "treatise," which has been defined to be a "written composition on a particular subject in which the principles of it are discussed or explained;" and if one looked no further into the work before us than the chapter of contents, he would probably come to the conclusion that the author had handled his subject in a manner fairly entitling him to dignify his work with so pretentious a designation. Mr. Ram commences with an introductory discourse, which at first

sight looks like science, and then he devotes a number of separate chapters to such abstract topics as "perception," "impression," "memory," "recognition," "suspicion," "probability, &c.;" and, as a rule, each chapter opens with a definition or description of the principal topic under consideration. So far we do not complain that he has not sufficient seeming regard to scientific method and treatment. What we object to is, that the science of the book is confined wholly to the names of the chapters, and to the definitions and descriptions to which we have referred. For the rest, it is little more than an incongruous collection of extracts, with very slender pretensions, for the most part, to anything like skilful collation, or appositeness to the matter in hand. Some of the definitions themselves, moreover, are frequently curious specimens of logic, and are by no means likely to aid the reader in his attempt to appreciate the design of the author orto underst and the question immediately before him. The introductory chapter informs us, that "subjects of jurisprudence are facts and laws;" and having made this lucid and logical averment, Mr. Ram proceeds to tell us that "facts are the source and the cause of laws. From facts proceed rights and wrongs; both requiring the government of law." These are his first utterances, and are somewhat calculated to deter criticism, for they are sufficiently scholastic in form, and dogmatic in tone. They are, nevertheless, as nonsensical as they could well be; and this we think must be apparent to Mr. Ram himself by this time, if he has taken the trouble to consider their meaning. Why facts and laws should be said to be *par excellence* subjects of jurisprudence, more than men and things, rights and wrongs, punishment and reformation, individuals and society, or any one of a dozen of such couples of nouns as we might string together, Mr. Ram will not find it easy to show. Indeed, until we read this introduction, we were under the impression that of all the entities or abstractions in the world, of which it could not be predicated that they were not subjects of jurisprudence, laws most certainly belonged to this category, inasmuch as they are themselves *identical* with jurisprudence, and we know of nothing that can be its own subject. As to the remaining term included in the predicate of the first proposition, we admit it is difficult to deny that facts are subjects of jurisprudence; but inasmuch as facts are also subjects of every other science, actual and possible, just as much as they are of jurisprudence, and as this part of the definition is, therefore, merely a truism, and utterly worthless for the author's purpose, it might as well have been omitted. It gives us no more information than Mr. Emerson did, when he informed the world that "belief consists in accepting the affirmations of the soul, unbelief in denying them." This is only a showy way of talking sheer nonsense, the matter but not the manner of which is equalled by our author in the work before us. We confess to an inability on our part to extract anything like a definite idea of what is meant by the proposition that "facts are the source and the cause of laws," especially after being told that both facts and laws are in common the subjects of jurisprudence. In one sense, facts are the source and the cause not only of laws, but of everything in the universe, except the self-existent great First Cause: but of what use it can be to propound this, as an important axiom especially applicable to the subject of jurisprudence, we are at a loss to discover. Indeed, we doubt very much whether Mr. Ram himself attached any very definite meaning to the words "source" and "cause," as they are used in this definition. Does he mean that facts are the final, the efficient, or the physical cause of laws, the *id a quo*, the *id ex quo*, or the *id propter quod*. We have been told by some that jurisprudence owes its origin to an original contract between men emerging from the savage state, and that it is merely the creature of society; by others, that it emanates and derives its sanctions from the moral nature of man; while a third class of teachers inform us that it is at once the creature of political society and of human reason. But if Mr. Ram's fundamental proposition be true, namely, that facts are the cause of laws, he may claim to be the founder of a new legal philosophy. However, lest we might go astray in following the logic of our author, he gives us a definition of the sense in which he uses the term "fact," which we are tempted to quote:—"By fact is here meant," says Mr. Ram, "anything that is the subject of testimony; anything that a witness rightly testifies to be a fact. If a thing be perceived by any sense of the body or faculty of the mind, the perception is a fact. If anything is seen or heard, the seeing or hearing of it is a fact. If any emotion of the mind is felt, as joy, grief, anger, the feeling of it is a fact. If the operation of the mind is productive of an effect, as intention, knowledge, skill, the possession of this effect is a fact. If any proposition be true, whatever is affirmed or denied in it is a fact. A. said this or that, or did this or that—if these propositions be true, then that A. did so say or did so do is a fact."

It will be seen from this extract that our author here gives up the only excuse which he could possibly have for his prior definition of the cause of laws; for although, as we have observed, "facts"—using the word in its absolute sense—are the cause not only of laws but of every other study, yet it is sufficiently obvious that "facts," according to Mr. Ram's use of the word, as it is so elaborately explained by himself, are neither the source nor the cause of laws except that very small part of them which prescribe rules for the admission of evidence. Mr. Ram tells us that "from facts proceed rights and wrongs," and then he goes on to say that he means nothing for a fact except a perception, or that objective phase of a fact which may be given in evidence; "a fact is . . . anything that a witness rightly testifies to be a fact"—a definition which we may be allowed to observe violates one of the first rules in logic. But we do not dwell on that; we merely ask how can it be said that rights and wrongs proceed from perceptions, or from the evidential quality of things? Again, what is the meaning of telling us "that if a proposition be true, whatever is affirmed or denied in it is a fact"? But supposing this to be something else than a silly truism, how can such a fact be the cause of laws, or in what sense do rights and wrongs proceed from it? Mr. Ram tells us that "if any emotion of the mind is felt (what emotion of the mind is not?) as joy, grief, anger, the feeling of it is a fact." But why is not the emotion itself a fact, and in what sense is the feeling of an emotion by one person the subject of testimony by another? We find, however, that our comments upon the first half page leave us little room for any observations upon the remainder of the book, as to which we can only say, that it is very pleasant reading excepting the first few lines of some of the chapters, where our author will try his hand at dialectics, in which he is by no means an adept. A good notion of the staple of the book may be obtained from the information that immediately after the extract which we have given above, comes "a tale which consists exclusively of facts." The tale is a page from Wordsworth's poem of "Lucy Gray;"—then comes a single line from the pen of our author informing us that "in Shakespeare is this example of testimony of facts," upon which we have a page and a half from "Romeo and Juliet," being for the most part the speech of the Friar, after which the youth describes how

> "He came with flowers to strew his lady's grave;"

and what then happened. Our author next solemnly proceeds to add by way of comment that "a fact once in complete existence, once ended, admits of no addition no subtraction;" an apopthegm which is supported by a quotation from Horace, and another from the sayings of Lady Macbeth. It is indisputable that Mr. Ram is a man of very extensive reading, and that his book is characterised both by scholarship and taste. It abounds in learned references, although they are not always very apposite to the subject. Great industry, moreover, is shown in bringing together passages from the "State Trials," and a variety of authors, as illustrations of the rules laid down in this treatise—if indeed it contains what can properly be so called. We can only add that Mr. Ram has written a very readable and amusing book, and one calculated to be of use to beginners in law,— if they have the resolution to confine their reading wholly to the extracts.

THE LAW AMENDMENT SOCIETY.

The seventeenth anniversary festival of the Law Amendment Society took place on Saturday evening, the 13th instant, at the Ship Tavern, Greenwich, the Right Hon. Lord BROUGHAM president of the society, in the chair. Amongst the company were the Attorney-General (Sir William Atherton, M.P.); Sir Fitzroy Kelly, M.P.; Mr. Scholefield, M.P.; Mr. Crauford, M.P.; Mr. W. H. Marsh, M.P.; Mr. Hodgkinson, M.P.; Mr. Steel, M.P.; Mr. Hadfield, M.P.; Mr. Russell Gurney, Q.C. (Recorder of London); Mr. Serjeant Shee; Mr. Macqueen, Q.C.; Sir Erskine Perry; Sir Laurance Palk, &c.

The cloth having been removed, and the usual loyal and patriotic toasts given from the chair and duly honoured,

The noble PRESIDENT rose to propose the toast of the evening, and said it afforded him great satisfaction at that seventeenth annual meeting to be able to state that during the past year great and important success had attended the operations of the society, although they had sustained a severe loss in the death

of the late Lord Chancellor, a warm friend of the association, and of their former secretary, Mr. James Stewart. These were irreparable losses, and he could only name them and pass on. Some very important measures of law amendment had been desired and introduced to Parliament; and if they had not yet actually passed, he saw no reason to doubt of their shortly passing and being placed on the statute book. There was the Bankruptcy and Insolvency Bill, which had so far passed both Houses of Parliament that it only remained for the House of Commons to consider the changes, by way of amendment, that had been made in the Bill by the Lords; and it was most satisfactory to know that even if all those alterations were deemed to be erroneous and such as ought not to have been made, there would still remain enough in the Bill to merit great approval, and to occasion grievous disappointment if it should now be lost. He trusted, therefore, that the Bill would be passed in its present shape. The other great measure almost certain to pass this session was the Consolidation of the Criminal law. Four of these Bills had gone up to the Lords, and the fifth was to go on Tuesday; and, therefore, they were entitled to expect that the whole five were upon the point of becoming law. Many earnest attempts had been made during the last ten years to consolidate the criminal law. The subject had been referred to a select committee of the House of Lords, and thoroughly sifted; and Bills were prepared by learned, experienced, and skilful draftsmen. These were approved by the Upper House, and sent to the Commons, where they met with a fate which it was not very extraordinary that they should meet with in a House composed of so many and diverse members, entering upon a discussion of three or four hundred legal clauses, when there was no question of change or amendment, but only of consolidation and arrangement. Until the House of Commons should be content to accept the advice of Lord Lyndhurst, and confide in skilful and learned persons, and adopt their work with as little change as possible, no effective consolidation could be hoped for. Happily, at length, the House of Commons had most wisely and judiciously seen the propriety of adopting that course, and therefore it might be expected that the five Bills would be carried through both Houses and lay the foundation of the consolidation of the statute law, civil as well as criminal. This was a great subject, and he hoped and trusted that it would be felt to be so by the public, as well as by the members of this society. There were many other changes in progress, and some of them were in a hopeful state, while others were less so. For instance, there was the Bill of Mr. Denman sent up from the House of Commons last session for extending to criminal cases the change which had been made in the common law procedure in civil cases. The Bill passed the Lords, but with an amendment that was objected to by the Commons, and the prorogation took place before it could be considered. It was an unfortunate amendment, and he agreed with the House of Commons in the wish to reject it, because it gave as an option to the Court that which ought to be the right of the party—namely, whether a second speech was to be allowed to the defendant or not. The Bill had been brought in again this year, and he hoped it would be carried through the House of Lords, though it had been delayed in the Commons through the influence of the chairman of quarter sessions, who entertained an unwholesome fear of long speeches except from those upon the bench, especially at the latter part of the day at that critical period—the approach of the dinner hour. There was one measure which he had frequently attempted to carry, but had always failed in doing, yet without which he held that our criminal jurisprudence was extremely defective—namely, the giving to the defendant in criminal cases the same right to be examined, if he desired it, as the defendant possessed in civil cases. In civil cases the defendant must be examined whether he desired it or not, but in criminal cases it should be optional. If he chose to subject himself to a cross-examination, he should not be prevented from so doing. The consequence of his not being allowed was absurd enough. The prosecutor was, of course, always examined, and he might prejudice the case of the prisoner; but if the verdict went against him, what remedy had he? None but to prosecute his prosecutor for perjury; and then his mouth was shut, and that of the defendant in the former case was open, and it had happened over and over again that the original prisoner had convicted his prosecutor without his being able to say a word. Those who objected to the defendant in a criminal case being examined, did so on the ground that no man ought to be called upon to criminate himself; but he was not called upon to do so, but only voluntarily to expose himself to cross-examination upon the evidence which he gave. But it was said by some that if this should be the course of practice, every man who did not volunteer to be examined, would be supposed to be guilty. Well, for himself, he should not much mind if that supposition should be entertained. He trusted that those of them who lived to see another session of Parliament would witness the adoption of a measure of this kind, and of other much-needed reforms. Having adverted to the favourableness of both the late and the present Governments to the cause of Law Reform, the noble lord complimented the present Attorney-General, the Lord Chancellor, and Sir Fitzroy Kelly upon their most useful exertions in this direction. He then adverted to the defective state of the criminal law in continental countries, and to the improvements that had been effected in France of late years, and spoke of his friend M. Berryer as one of the first lights of the law in that country—a man of great diligence and extraordinary eloquence, whose powers as an advocate, and whose unsullied honesty and integrity to his clients, at all hazards to himself, were such that he could only be compared to our own illustrious Erskine, that greatest of advocates and brightest of legal luminaries. He expected that M. Berryer would pay a visit to this country at the beginning of next Michaelmas term; and might mention that he had taken the advice which he (Lord Brougham) had tendered to him, to prepare some of his most remarkable speeches for the press, for the benefit of the profession, after the manner of Erskine and Curran. He might mention that the late Lord Plunkett had also listened to his advice to the same effect, and was in the course of preparing some of his eloquent and meritorious speeches for the press, at the time of his decease, and he hoped to learn that considerable progress had been made. The noble lord concluded by giving "Prosperity to the Law Amendment Society."

The ATTORNEY-GENERAL proposed the next toast, "Lord Brougham, President of the Society," and said he felt that any one who was called upon to do honour to Lord Brougham was himself honoured in the invitation. And on no occasion since the manifestation of approval, if he might so say, of the sovereign had been extended to himself in the promotion he had recently received—had he felt prouder of that promotion than he did at that moment when it called him to the performance of this pleasing task. At the same time he must confess to a feeling of embarrassment as to the course which he ought to pursue. He felt that one could never say too much in approbation of the meritorious career of the noble and learned president; but at the same time he remembered that the noble lord had been so long under the notice of his countrymen, that his talents, his acquirements, and his great achievements, were so well known, and had rendered him so illustrious, that to say much of the noble lord personally would be to commit the fault of using the bush as an indication of where the good wine was to be found. It would certainly be superfluous, and perhaps be hardly in good taste, to refer in any detail to the achievements of his life. For much more than half a century had the noble lord been engaged in the amelioration of both the civil and the criminal law of his country. The nature and extent of his efforts were well known, and the talent involved in those efforts all must appreciate, while they hailed with gratitude the eminent success that had attended the endeavours he had made. The noble lord had enjoyed a pleasure and satisfaction which to many illustrious men before him had been denied—he had lived to witness, largely, the fruits of his own labours. He had lived to reap a harvest from the seed he had himself sown. He had lived to know what his countrymen think of him at the present time; and he could be in no mistake or doubt as to what of himself the opinion of posterity would be. He need not say that the noble lord had worked within no narrow or circumscribed area of law reform. The criminal law he had assisted to ameliorate, and the civil law he had helped to deprive of grave defects, and to put upon a footing consonant with reason and justice, so that no English lawyer needed to be ashamed. If a barbarous criminal code had been altered, so that our criminal law consisted with an enlightened judgment, and proper Christian feeling, the noble lord was entitled to say, "I did it." The civil law, also, and its administration at the present time compared most favourably with the state in which it was found in the early days of their president; and to most of the changes that had been effected, the noble lord might fairly point, as having been directly brought about by his personal intercession, or mainly caused by his having well prepared the way for those by whom the improvements were actually accomplished. Having ventured so far to speak of the labours and great merits of the noble lord, he would be guilty of committing an injustice if he did not say that their noble and learned friend had not only been a great lawyer among great lawyers, but also a philosopher among philosophers,

and a chief among men of letters; and above all, the towering and consummate orator of the age. To these things, at least, a word of reference should be made—to his high deserts, to the acknowledgment they have received at the hands of his countrymen, and to the success with which his efforts have been attended. He need say nothing of the long connection of the noble lord with this society, for it was mainly owing to him that it had been able to do so much, and that comparitively, so little remained for it to do. He would not further occupy the attention of the meeting, but propose the toast which he was sure would be received by all with the highest possible gratification—"Lord Brougham, President of the Society."

The toast was drunk with loud applause.

His LORDSHIP said he returned his hearty thanks for the very kind reception which had been given to the much too kind statement of his honourable and learned friend the Attorney-General, and he felt that he ought to say that one of the greatest improvements in our courts of justice relating to the examination of witnesses in civil cases, was effected in the first instance by his noble and lamented friend, Lord Denman. But further improvement was required in this department by the carrying more fully out the principle of the Act of 1851.

The RECORDER OF LONDON gave "The House of Lords and the House of Commons." It would not be difficult to point out many members of the House of Commons who take a warm interest in the improvement of the law, and there were also not a few eminent law reformers among the colleagues of the noble lord the president of this society, whom they must all rejoice to see still in possession of that vigour of mind which it seemed that he would never lose. In both Houses, measures of great value had been produced, and found general favour; and had there been a little more of joint action between the two branches of the Legislature, more of them would have doubtless passed into law. It was certainly a matter of deep regret that Law Reform Bills were not sent more speedily from one House to the other. It frequently happened that when a measure had met the approval of one House, it was not sent to the other time enough to be considered and passed. One session the Commons approve of a measure, and the next session the Lords, but each sends it to the other too late to have it passed into law. He must, therefore, rather refer to the intentions than to the acts of the Houses. He rejoiced to believe that there never was a time when so great and prevalent a desire existed to carry into effect real amendments of the law, and when so few interested motives stood in the way of the necessary reforms being effected. The society had reason to congratulate itself that its endeavours to excite public attention to the subject it had in view had not been in vain. The honourable and learned gentleman concluded by proposing the toast, which was cordially received.

Sir FITZROY KELLY said it had sometimes, though not often, fallen to his lot to return thanks on behalf of the House of Commons for a compliment like that which both Houses of Parliament had at that moment received at the hands of the present company; but this was the first time, in a pretty long public life, that he had been called upon to return thanks for the House of Lords. He might say with perfect sincerity that he was thankful we have a House of Lords. And he was thankful indeed, that his noble and learned friend, whose kindness was equal to his genius, had for so extended a period belonged, and yet belongs, to that great assembly; for he believed that in times like these, and in a great and free country like this, where loyalty and attachment to our eminent institutions exist in the minds of all classes, the House of Lords, one of the chief of our institutions, would ever be safe, would ever be respected. And he held it to be entitled to the respect which it enjoyed at the hands of the community in general. In that House the noble and learned lord occupied a high place, if indeed it might not be said that he was unrivalled by any of his compeers; while it might most certainly be said that he had done much towards making the House of Lords to be respected in the manner that it was. It was impossible for him also to return thanks for the House of Commons without remembering, and of which the company needed not to be reminded by the very eloquent and appropriate observations of his learned and worthy friend the Attorney-General, whom he, for one, might venture to say that he rejoiced to see in that office, that the noble lord the president of this society was once the most distinguished of all the members of that great assembly. They needed not the eloquent voice of the hon. Attorney-General to remind them that the noble and learned lord, who had been the great law reformer of the age, was also the chiefest of orators in that great assembly of the nation. He was himself old enough to remember the time when the noble and learned lord, who was then the leader of the great party to which he belonged brought forward in the House of Commons the great reforms which his genius had devised, and which it had been his happy fortune, in the evening of his life, to mature and bring to such successful issues. He remembered seeing his noble friend rise in so thin a House that it might have been counted out, if any wretched enemy of his country had attempted it, and in a speech of six hours develope those reforms which he conceived ought to be made in the laws of the country. It might be remarked in passing that there were some pre-eminent men then members of the House of Commons who when the illustrious speaker rose and began to address the assembly rose also to pass out of the House to dinner, but who were arrested before they could reach the threshold, and returning to their places sat listening motionless until that speech of six hours had terminated in a peroration which never could be forgotten while the records of the country should continue to exist. In that speech was laid the foundation of those vast and excellent law reforms which had since occupied the attention of the country, many of which had passed into law, but some of which had still to be struggled for. They had but little reason, however, for disappointment if they considered how many useful and comprehensive measures had become law since 1828. Because of the difficulties of the times, these great questions passed almost unheeded, but they had since sunk deeply into the minds and hearts of the people of this country. Difficulties had since existed, and all had not been done that might have been done, or, at least, that was wished by many; but all must feel and acknowledge that through the untiring exertions of the noble lord and others, statesmen in both Houses of Parliament, many great law reforms had been carried into practical effect. In fact, such extensive strides had been made towards the perfection of the law, as to lead to the belief that in the course of time their highest hopes would be accomplished. Having enumerated the various steps by which the present stage had been reached, and paying a warm tribute to the services of Lord Lyndhurst, Lord Wensleydale, and other legal lights, he pointed out some valuable assistance which had been given by the society whose anniversary they had met to celebrate. But there were still many things to do in the way of reform before it would be complete, and he looked forward to the time when there should have been effected a complete consolidation of the statute law of the realm. He should never consider his own task wholly done, or think he had succeeded in that which ought to be the great object of a Christian country, till he should have seen several reforms completely effected in the criminal law. First and foremost was the question of a criminal appeal. At present, a man's life as well as his fortune and character depended upon a single opinion without appeal. He did trust that before very long we should have some system of criminal appeal established. It had always been inconceivable to him why or how it should have arisen that in the most enlightened country in the world, he, who above all mankind, knew most of the subjects under investigation, should alone have his lips closed; and therefore he cordially agreed with the noble lord, that a person charged with a criminal offence ought not to be precluded from giving evidence, and that to permit a prisoner to give evidence on his own behalf, would be one of the greatest amendments of the law. As this was the first time for many years it had been his good fortune to attend the annual meeting of this society, and especially as it was the first time he had had the advantage of seeing the noble and learned lord in the chair, he had been tempted to expatiate upon these subjects, and in conclusion he would say that in his own efforts in the cause of law amendment, he should always be thankful to have the assistance of this society, and that he would always do his best to carry their suggestions into effect. His earnest wish was that the society might long continue to do that signal benefit to the country it had hitherto done, and be presided over for many years by the noble and learned lord.

The proceedings then terminated.

CONCLUSION OF A WILL.

We are indebted to an eminent conveyancer for the following form of attestation to a will, and for the directions and reasons for its use, which are appended:—

"In witness whereof I have hereunto set my hand the day and year first above written (*a*).

(Signed) "HUGH JONES.

"The above writing contained in this and the preceding sheets of paper having been signed by A. B., of as his last will in the presence of us present at the same time, we, without quitting his presence, do attest and subscribe the same in the presence of each other, the [5] alterations against which respectively the letter A is placed having been first made."

(*a*) As it is often necessary when a will has come into operation, to ascertain the date and the names of the executors, those facts should be placed first, that they may be found at once, without any turning over of the sheets composing the document.

The attestation clause should not be written in a corner, as it usually is, but across the page, and immediately under the signature of the testator, for the witnesses are to *subscribe* the will of which the signature of the testator is part.

It is incorrect in the attestation clause to refer to "the said testator," for the witnesses are not supposed to have any knowledge of what is contained in the will; it is sufficient if they read the clause they sign.

The form of attestation given above seems to contain in as few words as possible all the facts necessary for a due and proper execution of a will. First, it teaches that the testator has signed, and this is not unnecessary, for cases have occurred where the witnesses signed first, and then the testator, which, of course, was not a due execution. Secondly, it teaches that the witnesses were present at the same time, and that they subscribed in the presence of the testator, and also in the presence of each other; and it also provides a convenient mode of authenticating alterations instead of the testator and the witnesses placing their initials opposite to each.

Public Companies.

BILLS IN PARLIAMENT

FOR THE FORMATION OF NEW LINES OF RAILWAY IN ENGLAND AND WALES.

The following Bills have been referred to committee in the House of Lords:—

LONDON, CHATHAM, DOVER, AND MARGATE.
MONMOUTHSHIRE.
WEST MIDLAND AND SEVERN VALLEY.

The following Bills have been read a third time and passed in the House of Lords:—

ABERYSTWITH AND WELCH COAST.
BISHOP STORTFORD, DUNMOW, AND BRAINTREE.
CLEVELAND.
COCKERMOUTH, KESWICK, AND PENRITH.
FOREST OF DEAN CENTRAL.
LUDLOW AND CLEE-HILL.
LYNN AND HUNSTANTON.
MUCH WENLOCK.
RAMSEY.
SALISBURY AND DORSET JUNCTION.
SWANSEA VALE.
VALE OF CLWYD.
WARE, HADHAM, AND BUNTINGFORD.
WAVENEY VALLEY.

The following Bill has been read a third time in the House of Commons:—

HAMMERSMITH, PADDINGTON, AND CITY JUNCTION.

The following Bill has passed through committee in the House of Commons:—

WEST LONDON EXTENSION.

REPORT OF MEETING.

BIRKENHEAD RAILWAY.

At the half-yearly meeting of this company, held on the 13th inst., a dividend at the rate of £2 10s. per cent. per annum was declared. This railway has been transferred to the London and North Western and Great Western Railway Companies, and the above dividend has been declared without prejudice to the right of the Birkenhead Company to receive £3 10s. per cent. from the other two companies under the agreement entered into with them, should the earnings of the Birkenhead Company be ascertained to exceed more than 2½ per cent. per annum. The exact earnings could not be stated, as the accounts had not been audited.

Law Students' Journal.

LECTURES AT THE INCORPORATED LAW SOCIETY.

The council of this society have elected Mr. Thos. Henry Haddan to deliver a course of lectures on equity; Mr. Freeman Oliver Haynes, on Conveyancing; and Mr. William Murray on common law and mercantile law.

The lectures will commence in next Michaelmas Term, and be continued until the end of the several courses in March.

Court Papers.

ORDER OF COURT.

JULY 13, 1861.

THE Right Honorable RICHARD, BARON WESTBURY, Lord High Chancellor of Great Britain, by and with the advice and assistance of The Right Honorable Sir JOHN ROMILLY, Master of the Rolls, The Honorable the Vice-Chancellor Sir RICHARD TORIN KINDERSLEY, The Honorable the Vice-Chancellor Sir JOHN STUART, and The Honorable the Vice-Chancellor Sir WILLIAM PAGE WOOD, Doth hereby, in pursuance and execution of all powers and authorities enabling him in that behalf, Order and direct in manner following:—That in all cases in which a Bill of Complaint shall have been or shall be ordered to be taken pro confesso against any defendant or defendants, such Bill may be read at the hearing from a printed copy thereof, stamped with a proper stamp, by one of the Clerks of Records and Writs, indicating the filing of such Bill of Complaint, and the date of the filing thereof; and, where such Bill shall have been amended, the same may be read from a printed copy thereof, or from a copy thereof partly printed and partly written, stamped with the proper stamp, by one of the Clerks of Records and Writs, indicating the amendment of such Bill and the date thereof, without the attendance of the Clerk of Records and Writs, as hath hitherto been the practice.

WESTBURY, C.
JOHN ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.
JOHN STUART, V. C.
W. P. WOOD, V. C.

BANKRUPTCIES THIS YEAR.—As was to be expected, the number of bankruptcies in the first half of the current year is considerably above the average. In the Liverpool district 63 bankruptcies were gazetted; in the Manchester, 56; in the Birmingham, 130; in the Leeds, 78; in the Bristol, 43; in the Exeter, 25; in the Newcastle, 11; and in the London, 321; showing a total of 727, or at the rate of 1,454 per annum, as compared with 1,123, the average for the preceding ten years. The only district which is below the average of the previous decade is Newcastle, where the bankruptcies have diminished to the extent of 39 per cent. In the Liverpool district there has been an increase of 59 per cent.; in the Manchester an increase of 26 per cent.; in the Birmingham an increase of 34 per cent.; in the Leeds an increase of 48 per cent.; in the Bristol an increase of 26 per cent.; in the Exeter an increase of 19 per cent.; and in the London an increase of 17 per cent. The increase, taking the country generally, is 29 per cent. After all however, these statistics afford by no means a complete view of the state of the commercial world, an immense number of "private arrangements" being now made between debtors and creditors.

Every year we are reminded of the extravagant grant of compensations made when the Probate Court was reformed, by the publication of a list of the annuities paid during the twelvemonth. In 1860, after buying up 268 small allowances, they amounted to £115,987. Some of the proctors and registrars receive above £1,000 a-year for ceasing from their labours, one registrar above £3,000, and the Rev. Robert Moore £7,990 a-year. Judging from the compensation, which we believe is

the largest ever granted, the work done by this rev. gentleman should have been stupendous. The salaries and expenses of the new Court of Probate in London, and of the London registry, amount to nearly £40,000 a-year, and the entire charge for the Courts of Probate in London and Dublin (including these compensations) reached £180,144 in the year 1860. The fees received in those courts amounted to £61,903, leaving a deficiency of £118,241. It seems that this may be reduced by the fees in the country district registries exceeding the salaries and expenses, but the deficiency appears to be still about £100,000 a-year, to be paid from the public purse.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

English Funds.		Shrs.	Railways—*Continued.*	
Bank Stock	..	Stock	Ditto A. Stock	100
3 per Cent. Red. Ann..	89½	Stock	Ditto B. Stock	131
3 per Cent. Cons. Ann.	89½	Stock	Great Western	70⅞
New 3 per Cent. Ann..	89½	Stock	Lancash. & Yorkshire	111⅝
New 2½ per Cent. Ann.	..	Stock	London and Blackwall.	62
Consols for account ..	89⅝	Stock	Lon. Brighton & S. Coast	121
India Debentures, 1858.	..	25	Lon. Chatham & Dover	45
Ditto 1859.	..	Stock	London and N.-Wstrn..	94½
India Stock	219	Stock	London & S.-Westrn.	..
India 5 per Cent. 1859..	99½	Stock	Man. Sheff. & Lincoln..	47½
India Bonds (£1000) ..	dis.	Stock	Midland	121½
Do. (under £1000).....	dis. 13	Stock	Ditto Birm. & Derby	97
Exch. Bills (£1000)...	dis.	Stock	Norfolk.....	59
Ditto (£500)....	..	Stock	North British	63½
Ditto (Small) ..	..	Stock	North-Eastn. (Brwck.)	107
		Stock	Ditto Leeds	64
		Stock	Ditto York	94½
Railway Stock.		Stock	North London.....	98
		Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock Birk. Lan. & Ch. Junc.	85			
Stock Bristol and Exeter....	96	Stock	Shropshire Union	48
Stock Cornwall	6	Stock	South Devon	41
Stock East Anglian	17	Stock	South-Eastern	81½
Stock Eastern Counties	50½	Stock	South Wales	65
Stock Eastern Union A. Stock	41	Stock	S. Yorkshire & R. Dun	97
Stock Ditto B. Stock....	30	25	Stockton & Darlington	40½
Stock Great Northern	108½	Stock	Vale of Neath	93

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months :—

DEWAR, CAROLINE, Widow, Melville-street, Edinburgh, £270 14s. 10d. Consols.—Claimed by JOHN COCKBURN, the acting executor.

GREENWOOD, THOMAS, Gent., Bensington, Oxon, £3,300 Consols.—Claimed by ANNE ELIZABETH GREENWOOD, Widow, the acting executrix.

KITCHENER, GEORGE, Seal Engraver, Little Britain, £150 New Three per Cents.—Claimed by THOMAS KITCHENER and WILLIAM JOHNSON, the persons named in the said order.

Births, Marriages, and Deaths.

BIRTHS.

CHANCE—On July 13, at 23, Leinster-gardens, Hyde-park, the wife of George Chance, Esq., Barrister-at-Law, of a son.

FRANCIS—On July 13, at 3, Gordon-place, Tavistock-square, the wife of Philip Francis, Esq., Barrister-at-Law, of a son.

HENNIKER—On July 16, at Leinster-square, the wife of Aldborough Henniker, Esq., Barrister-at-Law, of a son.

MORRIS—Recently, at Blackrock, near Dublin, the wife of William O'Connor Morris, Esq., J.P., Barrister-at-Law, of a daughter.

MARRIAGES.

O'GRADY—PAPILLON. HAVILAND—PAPILLON—On July 10, Carew Louis Augustus O'Grady, Esq., Captain Royal Engineers, to Emily Caroline, daughter of Thomas Papillon, Esq., of Crowhurst-park, Sussex; also, at the same time and place, Francis Gregory Haviland, Esq., Barrister-at-Law, to Adelaide, daughter of Thomas Papillon, Esq.

RUDOLE—SOLOMON—On June 12, at Lunenburg, Nova Scotia, Captain G. J. Rudole, of Liverpool, to Bessie, daughter of G. L. Solomon, Esq., Barrister-at-Law, and Judge of Probate for the county of Lunenburg.

DEATHS.

BUSH—On July 18, at Kew Green, Surrey, in his 9th year, William Methuen Bush, fifth son of Frank Whittaker Bush, Esq., of Lincoln's-inn, Barrister-at-Law.

HUDSON—On July 6, W. H. Hudson, Esq., Town Clerk of Bradford.

KETTERER—On July 12, at Nutley Villa, Torquay, Oswald William Ketterer, Esq., of the Supreme Court of Judicature, Bombay, aged 56.

MORE—On July 12, at Edinburgh, John Schank More, Esq., Advocate, LL.D.

PRICE—On July 9, at the residence of Stephen Walcott, Esq., 17, Lansdowne-crescent, Notting-hill, Miss Caroline Price, last surviving sister of the late Richard Price, of Bristol and Hampstead, Barrister-at-Law.

London Gazettes.

Professional Partnership Dissolved.

FRIDAY, July 19, 1861.

BOWERMAN, RICHARD, & JOSEPH WARE, Attorneys & Solicitors, Uffculme, Devonshire (Bowerman & Ware), by mutual consent July 15.

Windings-up of Joint Stock Companies.

TUESDAY, July 16, 1861.

LIMITED IN BANKRUPTCY.

LIVERPOOL TRADESMAN'S LOAN COMPANY (LIMITED).—Commissioner Perry will sit on Aug. 7, at 12, to make a dividend.

FRIDAY, July 19, 1861.

UNLIMITED IN CHANCERY.

MEAKIN'S JOINT STOCK BREWERY COMPANY.—The Master of the Rolls will, on July 30, at 12, appoint an official manager of this company.

MEAKIN'S JOINT STOCK BREWERY COMPANY.—Creditors to prove their debts before the Master of the Rolls on July 30.

NATIONAL INDUSTRIAL AND PROVIDENT SOCIETY.—The Master of the Rolls has appointed Robert Palmer Harding, of 3, Bank-buildings, London, and Serle-street, Lincoln's-inn, Middlesex, Accountant, official manager of this company,

LIMITED IN BANKRUPTCY.

DISTRICT SAVINGS BANK (LIMITED).—Petition for winding-up, presented July 15, will be heard before Com. Fane, at Basinghall-street, on Aug. 3, at 11.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, July 16, 1861.

BAKER, GEORGE, Rope Manufacturer and Ship Chandler, 2, Jamaica-row, Bermondsey, Surrey, carrying on business at Chennel-row, Bermondsey-wall, Surrey, and 12, Upper East Smithfield, Middlesex (George Baker & Son). Cattarns, Solicitor, 33, Mark-lane, London. Oct. 1.

BENSON, WILLIAM, Provision Dealer, Liverpool. A. J. & Wm. Moore, Solicitors, 4, Bridge-street, Sunderland. Sept. 30.

DAWSON, WILLIAM KENDALL, Auctioneer, Colchester, Essex. Cattarns, Solicitor, 33, Mark-lane, London. Oct. 1.

GAINSFORD, GEORGE RICHARD, Esq., 59, Regency-square, Brighton. Cattarns, Solicitor, 33, Mark-lane, London. Oct. 1.

HEAVER, ELIZABETH, Widow, 3, St. Martin-street, Dover. Watson, Solicitor, 14, Snargate-street, Dover. Sept. 17.

KIDSON, JAMES, Farmer, Topcliffe-common, Thirsk, Yorkshire. Richardson, Solicitor, Thirsk, Yorkshire. Sept. 1.

KIRKHAM, SAMUEL, Farmer, Buerton, Audlem, Cheshire. Bellyse, Solicitor, Audlem. Aug. 13.

LETT, ELIZABETH, Widow, 12, Upper Hamilton-terrace, St. John's Wood, Middlesex, and Folkestone, Kent. Webb, Solicitor, 44, Bedford-row, Middlesex. Nov. 2.

RYVES, WILLIAM CHARLES LANE, late Captain of the 12th Regiment of Bengal Native Infantry. Mead & Daubeny, Solicitors, 2, King's Bench walk, Temple, London. Sept. 1.

SCOTT, MILDRED, Spinster, 35, Assembly-row, Mile End, Middlesex. Blake, Solicitor, 22, College-hill, City. Aug. 16.

STODHART, THOMAS, Ironmonger, 18 and 19, High-street, Camberwell, Surrey. Lilley, Solicitor, Trinity-street, Southwark. Sept. 1.

WOOD, Mrs. ISABELLA MARY, 5, Cambridge-terrace, Dover. Percy & Goodall, Solicitors, Nottingham. Aug. 1.

YEATES, GEORGE, Farmer, Baldersby, Yorkshire. Richardson, Solicitor, Thirsk, Yorkshire. Sept. 1.

FRIDAY, July 19, 1861.

BEAUMONT, CHARLES, Wheelwright, Bradley-street South, Huddersfield. Drake, Solicitor, 30, New-street, Huddersfield. Aug. 21.

CAMPBELL, ELIZABETH, Spinster, 64, London-road, Southwark, Surrey. Nelson & Son. Solicitors, Doctor's-commons, London. Sept. 1.

COLLINS, ISAAC, Gent., Brearley-street, Birmingham. Tyndall & Johnson, Solicitors, 34, Waterloo-street, Birmingham. Sept. 29.

CROFTON, Rev. AUGUSTUS, Clerk, Lansdowne-place, Brighton. Augustus S. Twyford, Solicitor, 24, New-street, Spring-gardens, Middlesex. Oct. 1.

DENDY, STEPHEN, Esq., formerly of Leigh-place, Surrey, and late of Sandfels, near Reigate, Sadler, Solicitor, Horsham, Sussex. Sep. 13.

FAIR, ALEXANDER, Companion of the Bath, and a General in the Honourable East India Company's Service, 5, South-crescent, Bedford-square, Middlesex. Duff, Solicitor, 5, Nicholas-lane, Lombard-street, London. Sep. 15.

LETT, ELIZABETH, Widow, 12, Upper Hamilton-terrace, St. John's-wood,

Middlesex, and Folkstone, Kent. Webb, Solicitor, 44, Bedford-row, Middlesex. Nov. 2.

MACREADY, WILLIAM VEREY, Merchant's Clerk, Birmingham. Ryland & Martineau, Solicitors, 7, Cannon-street, Birmingham. Aug. 19.

PETERS, JAMES, Paper Maker, Tovill, Maidstone. Stephens & Son, Solicitors, Maidstone. Sep. 15.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, July 16, 1861.

BEACH, JOSEPH, Farmer, Tanworth, Warwickshire. Wells v. Boulton' V.C. Wood. Aug. 5.

BRIGGS, ARTHUR RENNIE, Gent., Lewes, Sussex. Fuller v. Wood, V.C. Stuart. Nov. 2.

LANGRIDGE, WILLIAM BALCOMBE, Gent., Lewes, Sussex. Winton v. Langridge, M. R. Nov. 2.

PLANE, WILLIAM SQUIRE, Brewer, Maidstone, Kent. Hall v. Plane, V.C. Stuart. Nov. 1.

UNIVERSAL COMMUNITY SOCIETY OF RATIONAL RELIGIONISTS. Pare v. Clegg. M. R. Nov. 5.

WELLER, RICHARD, Farmer, Hoop Merchant, and Brick and Tile Manufacturer, Capel, Surrey. Dendy v. Sadler, M. R. Aug. 5.

FRIDAY, July 19, 1861.

BOARDMAN, EDWARD, a Major-General in the Honourable East India Company's Service, Euston-place, Middlesex. Stanford v. Sandeman, M. R. Oct. 30.

DE CAULIER, WILLIAM, Gent., 3, Terrace, New Norfolk-street, Islington, Middlesex. Wetherell v. Wetherell, V. C. Stuart. Oct. 30.

DONNALL, GEORGE, Licensed Victualler, Five Bells, St. Mary Cray, Kent. Kelsey v. Donnall, V. C. Wood. Oct. 29.

EMMERTON, REBEKAH, Spinster, Barnet, South Mimms, Middlesex. Maskell v. Farrington, V. C. Kindersley. Nov. 1.

Assignments for Benefit of Creditors.

TUESDAY, July 16, 1861.

BARRETT, SAMUEL THOMAS, Builder, West Teignmouth, Devonshire. *Sol.* Templer, West Teignmouth. July 8.

BELL, ELIJAH (sometimes called George Elijah Bell), Fishmonger and Poulterer, 12, Regent's-place, Clifton, Bristol. *Sol.* Sherrard, Bristol. July 5.

GOODACRE, WILLIAM, & THOMAS COKAYNE, Schoolmaster, Chilwell, Nottinghamshire. *Sols.* Thorpe & Thorpe, St. Peter's-gate, Nottingham. June 25.

JAMES, JOHN, & ELIZABETH JAMES, Chemists and Druggists, Truro, Cornwall (James, Brothers). *Sols.* Hodge, Hockin, & Marrack, Truro. July 13.

JOY, JOHN ROBSON, Stock Manufacturer, 76, Aldermanbury, London. *Sol.* Jones, 15, Size-lane, London. July 3.

FRIDAY, July 19, 1861.

AIDAN, WILLIAM, Wheelwright & Machine Maker, Winterton, Lincolnshire. July 1. *Sol.* Mackrill, Barton-upon-Humber.

BUTT, DEBORAH, and HENRY HUGH BUTT, Soap Boilers & Tallow Chandlers (Butt & Sons), Gloucester. June 28. *Sol.* Ellis, Gloucester.

DIXON, JOHN, jun., Baker & Confectioner, Fore-street-hill, Exeter. June 21. *Sol.* Flood, 14, Castle-street, Exeter

HARSON, JOSEPH, Ironmonger, Great Yarmouth, Norfolk. *Sol.* Holt, Great Yarmouth. July 3.

IVY, JOHN ROBSON, Stock Manufacturer, 76, Aldermanbury, London. *Sol.* Jones, 15, Size-lane, London. July 3.

MACKINSON, CHARLES, jun., Grocer, Bath. *Sols.* Brittan & Sons, Albion Chambers, Bristol. June 18.

THOMAS, EDWARD, Farmer, Lodge, Broncroft, Diddlebury, Salop. *Sol.* Clark, Ludlow. June 19.

YORKE, CHARLES, & FREDERICK WILLIAM YORKE, Bankers, Peterborough & Oundle, Northampton. *Sol.* Percival, Peterborough. June 26.

Bankrupts.

TUESDAY, July 16, 1861.

BALLARD, NATHANIEL, Woolstapler, Faringdon, Berks. *Com.* Fane: July 27, at 11, and Aug. 30, at 12; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Plimsaul, 7, South-square, Gray's-inn. *Pet.* July 13.

BALLS, JAMES, Grocer, Tea Dealer, and Draper, Saloon, Essex. *Com.* Evans: July 26, at 2, Aug. 29, at 11.30; Basinghall-street. *Off. Ass.* Bell. *Sols.* Harrison & Lewis, Old Jewry, London. *Pet.* June 29.

CARTER, SAMUEL, Corn Merchant, Fen Stanton, St. Ives, Huntingdonshire. *Com.* Evans: July 26, and Aug. 29, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Lawrance, Plews, & Boyer, Old Jewry Chambers. *Pet.* July 12.

CASH, WILLIAM, Grocer, High-street, Portland-town, Middlesex, and Peterboro, Northamptonshire. *Com.* Fane: July 27, and Aug. 30, at 12.30; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Treherne, 17, Gresham-street. *Pet.* July 15.

GLAZEBROOK, GEORGE, Plumber and Glazier, Birmingham. *Com.* Sanders: July 29, and Aug. 26, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Southall & Nelson, Birmingham. *Pet.* July 5.

MARTIN, WILLIAM, ALFRED PHILLIPS YOULE, & WILLIAM RICHARDSON ROEBUCK, Iron Manufacturers, Doncaster, Yorkshire *Com.* West: Aug. 3, and 31, at 10; Sheffield. *Off. Ass.* Brewin. *Sols.* Smith & Burdekin, Sheffield. *Pet.* May 27.

NEWSHAM, WILLIAM, Innkeeper, Blackburn, Lancashire. *Com* Jemmett: July 26, and Aug. 16, at 12; Manchester. *Off. Ass.* Pott. *Sols.* Sales, Worthington, Shipman, & Seddon, Manchester. *Pet.* July 8.

RONALD, WILLIAM, Warehouseman, Manchester. *Com.* Jemmett: Aug. 1 and 22, at 12; Manchester. *Off. Ass.* Fraser. *Sols.* Higson & Robinson, Cross-street, Manchester. *Pet.* July 11.

SCOTT, GEORGE, Engineer, Alpha Works, Cubitt Town, Isle of Dogs, Middlesex. *Com.* Goulburn: July 29, at 11.30, and Aug. 26, at 11; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Clarke & Morrice, 29, Coleman-street, London. *Pet.* July 9.

WALKER, JOHN SHAW, Licensed Victualler, Hill Top, West Bromwich, Staffordshire. *Com.* Sanders: Aug. 2 and 23, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Jackson, West Bromwich, or E. & H. Wright, Birmingham. *Pet.* July 13.

WINDRAM, WILLIAM JAMES, & EDWARD SQUIRE TEBBUTT, Elastic Web Manufacturers, Leicester. *Com.* Sanders: July 26, and Aug. 13, at 11; Nottingham, *Off. Ass.* Harris. *Sols.* Stone, Paget, & Billson, Leicester. *Pet.* July 15.

YATES, JOHN, Mustard Manufacturer and Dry Salter, 14, Berry-street, Clerkenwell, Middlesex. *Com.* Fane: July 27, at 12, and Aug. 23, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Redpath, 27, Walbrook. *Pet.* July 15.

FRIDAY, July 19, 1861.

ASHWILL, WILLIAM THOMAS, Wine & Spirit Merchant, Burslem, Stafford. *Com.* Sanders: July 29, and Sept. 2, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Twigg, Burslem; or Smith, Birmingham. *Pet.* July 17.

BALLARD, WILLIAM, Woolstapler & Fellmonger, Faringdon, Berks. *Com.* Fane: July 29, at 12; and Aug. 30, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Plimsaul, 7, South-square, Gray's-inn. *Pet.* July 17.

BANNISTER, SARAH, Wool Dealer, Leominster, Hereford. *Com.* Sanders: July 31, and Aug. 28, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Smith, Birmingham. *Pet.* July 8.

HEARD, EDWARD JOHN, & JAMES JOHN WALTER, Packing Case Manufacturers, Norway-wharf, Wapping-wall, Middlesex. *Com.* Fane: July 29, at 11; and Aug 30, at 11.30; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Elworthy, 14, Southampton-buildings. *Pet.* July 15.

MALKIN, WILLIAM, Wine & Spirit Merchant, Macclesfield, Cheshire. *Com.* Jemmett: Aug. 1 and 29, at 12; Manchester. *Off. Ass.* Hernaman. *Sols.* Parrott, Colville, May, & Rudyard, Macclesfield. *Pet.* July 12.

MASON, JOHN GURNEY, Ironmonger, Ironmonger-street, Stamford, Lincolnshire. *Com.* Fane: July 30, at 11, and Sept. 6, at 12; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Chidley, 25, Old Jewry. *Pet.* July 5.

MAW, EDWIN, Engineer, Birmingham. *Com.* Sanders: Aug. 2 & 23, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* James & Knight, Birmingham. *Pet.* July 16.

PERRY, THOMAS FARMER, & JOHN EVANS WILSON, Timber Merchants & Farmers, Bridgnorth, Salop. *Com.* Sanders: Aug. 5, and Sept. 2, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Stamps & Jackson, Hull, or Hodgson & Allen, Birmingham. *Pet.* July 11.

SMITH, JAMES, Carman & Contractor, 19, Hope-wharf, Macclesfield-street City-road, Middlesex. *Com.* Fane: July 29, at 1, & Aug. 30, at 1.30; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Bennett & Stark, 4 Furnival's-inn. *Pet.* July 9.

SMITH, JAMES, Builder & Innkeeper, Guildford, Surrey. *Com.* Fane: July 30 & Aug. 30. at 12; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Jerwood, 17, Ely-place, Holborn. *Pet.* July 15.

WHELPLEY, WILLIAM WALKER, late of St. John's, New Brunswick, North America, but now Iron, Timber, & Commission Merchant, London. *Com.* Fane: July 29, at 1.30, & Aug. 30, at 2; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Linklater & Hackwood, 7, Walbrook, or Ewer, Liverpool. *Pet.* July 16.

BANKRUPTCIES ANNULLED.

TUESDAY, July 16, 1861.

CROSSLEY, JOHN, jun., Cotton Spinner, Manufacturer, and Merchant, Manchester, and Hebden-bridge, Yorkshire. July 11.

PARKES, JOSEPH, Coal and Brick Merchant, Lionel-street, Birmingham. July 13.

FRIDAY, July 19, 1861.

LORAN DE WOLF COCHRAN, Shipowner & Merchant, South Sea House, Threadneedle-street, London. July 15.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, July 16, 1861.

ALLEN, JOSEPH, Smallware Manufacturer, Irwell Foundry, Radcliffe Bridge, Lancashire. Aug. 6, at 12; Manchester.—BRYCE, ALEXANDER, & JAMES SHUTTLEWOOD OSWIN, Merchants and Commission Agents, Manchester. Aug. 8, at 12; Manchester.—COLEMAN, CHARLES, Seed Merchant and Flour Merchant, Halgavor Mills, Bodmin, Cornwall. Aug. 15, at 12; Exeter.—DIGBY, THOMAS, Tailor, Ottery St. Mary, Devonshire. Aug. 15, at 12; Exeter.—DRAKE, GEORGE, Glover and Leather Dresser, St. Thomas, Devonshire. Aug. 15, at 12; Exeter.—ELSTON, GEORGE, Shoe Manufacturer, Crediton, Devonshire. Aug. 6, at 12; Exeter.—EVANS, WILLIAM NATHANIEL, & ROBERT BUNCOMBE EVANS, Tanners, Colyton, Devonshire. Aug. 15, at 12; Exeter.—GUILLAUME, GUILLAUME, Watch and Clock Maker, St. Leonard's-terrace, Mount Radford, St. Leonard, Devonshire. Aug. 15, at 12; Exeter.—HARRATT, CHARLES, Iron Merchant and Ship Owner, 2, Royal Exchange-buildings, London, and Canning Town, Bow Creek, West Ham, Essex. July 30, at 11; Basinghall-street.—HILL, EDWARD ELLIS, Merchant and Broker, Liverpool. Aug. 7, at 12; Liverpool.—JONES, DANIEL, Coach Builder, Wrexham, Denbighshire. Aug. 7, at 12; Liverpool.—KING, JAMES, Cotton Manufacturer, Shawforth, Rochdale, Lancashire. Aug. 7, at 12; Manchester.—NIXON, JAMES, Painter and House Decorator, Lincoln. Aug. 7, at 12; Leeds.—RUE, THOMAS, Draper, 50, East Emma-place, East Stonehouse, Devonshire. Aug. 12, at 12.30; Plymouth.—SMITH, WILLIAM, & WILLIAM FRANCIS PATIENT, Tanners and Leather Merchants, Bermondsey New-road, Surrey (Smith, Patient, & Smith). July 26, at 11; Basinghall-street.—TUCKER, NICHOLAS, Cattle Salesman, Moorwinstow, Cornwall. Aug. 15, at 12; Exeter.—WALKER, JOHN, Tobacconist, Liverpool and Rochdale, Lancashire. Aug. 7, at 11; Liverpool.—WILLIAMS, ALFRED, Builder, Melcombe Regis, and Weymouth, Dorsetshire. Aug. 15, at 12; Exeter.

FRIDAY, July 19, 1861.

BENNING, WILLIAM, Law Bookseller & Publisher, Fleet street. Aug. 10, at 11; Basinghall-street.—CULLEY, SAMUEL UTTING, Wine & General Merchant, 4, Coleman-street, London, and of 2, Priory-grove, West Brompton, Middlesex. Aug. 10, at 12; Basinghall-st.—EVANS, GRIFFITH, Corn Merchant, Tyn-rhos, Valley, Anglesey. Aug. 15, at 11; Liverpool.—HARLAND, JOSEPH, & RICHARD READ, Cloth Merchants, Leeds. Aug. 9, at 11; Leeds.—HARLAND, JOSEPH, Cloth Merchant, Leeds. Aug. 9, at 11; Leeds.—SHEARD, SAMUEL, Currier, High Town, Birstal Yorkshire. Aug. 9, at 11; Leeds.

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THE SOLICITORS' JOURNAL.

LONDON, JULY 27, 1861.

CURRENT TOPICS.

As the Attorney-General in a recent speech on the Bankruptcy Bill informed the House of Commons that the Court of Chancery had too much work to do to be able to attend to appeals in bankruptcy, we have taken some pains to ascertain at the close of the legal year the actual state of business at Lincoln's-inn. The time is convenient for making such an inquiry, and as the opinion of many members of the House of Commons has, no doubt, been very much influenced by what fell from Sir William Atherton in reference to this question, it is desirable that we should without delay attempt to learn what the facts really are. We have now before us the Chancery Cause List for sittings after Trinity Term, 1861. This paper contains the name of every cause ready for decision on the 20th day of June last, not only upon original hearing, but upon further consideration, and upon appeal. The result of our inquiry is to inform us that not only every appeal ready for decision on the 20th day of June, but many others that have since come into the paper, and probably every one ready for hearing, will have been disposed of before the Court of Appeal rises for the long vacation. This does not include motions and petitions on appeal, which are not set down in the list, but are generally disposed of within two or three weeks after the appeal is presented. Every cause contained in the list to which we have referred, set down before the Master of the Rolls for hearing, was decided probably on an average of a month after it was down for hearing, and of less than a fortnight after it got into the cause list. The Vice-Chancellor Stuart rose on Thursday, having got through the whole of his list. In two branches of the Court only is there any arrear, and even in them it is by no means formidable. The number of causes set down before Vice-Chancellor Wood is usually very great, and he has yet been unable to dispose of all the causes set down before him. Vice-Chancellor Kindersley's Court is certainly not famous for speed, but suitors are aware of this, and do not resort there in any considerable numbers; so that, although he has not finished his paper, very few causes remain pending before him. It is sufficiently plain from this short statement that there is no particular pressure of business in Chancery, and that when Sir William Atherton advocated the appointment of a chief judge in Bankruptcy, upon the ground that the equity judges had already more than enough to do, and could not attend to bankruptcy appeals, he relied upon an argument which is unsupported by the facts.

Very few heads of law attain to anything like a definite or consistent form until they become the subject of a treatise, and, therefore, as we have no distinct book upon the uninteresting subject of *Interest*, the decisions comprised under this head of law are by no means satisfactory. The case of the *Attorney-General* v. *Kohler*, decided on Wednesday last, in the House of Lords, is a striking illustration of what we here state, and is, moreover, in itself an important authority upon the point which the case determines. The original suit was against the Crown, and was for the recovery of £7,822, which, in 1813, had been received by the Crown from the estate of a person who had died intestate, and, as was supposed, leaving no next-of-kin. After many years, however, a bill was filed by certain parties, who proved that they were entitled in this character, and claimed not only the sum actually received by the Crown, but a further sum of £14,429 as interest. This was unsuccessfully resisted by the Crown in the Court below, the decision of which was affirmed by the House of Lords upon the principle that as the Crown had not kept the money to pay over to the next-of-kin on demand, but made use of it, the Crown ought to be held liable to pay interest like an ordinary person. One would have supposed that the point was sufficiently simple, and must have been decided before. It appears, however, that this is the first express decision upon the subject, and that the matter was considered by the Attorney-General to be doubtful enough to be carried to the House of Lords for decision. But it ought to be mentioned, that neither the Vice-Chancellor Kindersley, from whose judgment the appeal was brought, nor any of the law lords, entertained the least doubt that under the circumstances the claimants were entitled to full interest.

The Bill for establishing High Courts of Judicature in the three Presidencies of India is not unlikely to be passed this session. Unless its provisions are materially altered it will place at the disposal of the Government some valuable patronage, and will cause no little commotion in the overcrowded ranks of the bar. Each high court is to consist of a chief judge and as many judges (not exceeding fifteen) as her Majesty may appoint. The judges must be selected either from amongst barristers of not less than five years' standing, or from members of the covenanted civil service who have served as zillah judges or judges of small-cause courts, or certain pleaders of the sudder courts or of the new high courts; but there is a proviso that not less than one-third of the judges of each high court shall be barristers and not less than one-third shall be members of the covenanted civil service. Upon the passing of the Bill the present supreme and sudder courts are to be abolished. Each of the high courts is to exercise "all such civil, criminal, admiralty and vice-admiralty, ecclesiastical, intestate and matrimonial jurisdiction, original and appellate," as her Majesty by letters patent may direct; and subject and without prejudice to the legislative powers of the Governor-General of India in Council, each high court is to exercise all jurisdiction vested in any of the courts abolished in the same presidency. There is a clause enabling governors of presidencies to authorise judges to sit in any places by way of circuit or special commission; and every high court is enabled to provide for its exercise of jurisdiction either by single judges or by division courts constituted by two or more judges of the high court. At present there is in each of the presidencies a supreme court, presided over by English judges, whose jurisdiction is regulated by the common law of England and the statute law as it existed in 1726, so far as they are not controlled by the acts of the Legislative Council of India. In actions relating to inheritance and succession to lands, and involving questions of contract or account, &c., the Hindoo law applies where a Hindoo is defendant, and the Mahomedan law where a Mussulman is defendant. The following account of the number and description of courts in existence is taken from a paper read by Mr. W. H. Bennet before the Juridical Society in 1858:—

In the whole circuit of the Bengal Presidency, 523—consisting of 48 presided over by Englishmen, civil servants of the company; 55 by principal Sudder Ameens, 30 by Sudr ameens, and 390 by Mounsiffs—these three last classes of judges almost wholly natives. These Courts have a gradation of jurisdiction.

In the Madras Presidency, 160 Courts—29 presided over

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In the Madras Presidency, 160 Courts—29 presided over

by English judges, or subordinate judges; 11 by principal Sudder Aumeens, 20 by Sudder Aumeens, and about 100 by Mounsiffs.

In the Bombay Presidency, about 95 Courts—8 presided over by English judges, 8 by principal Sudder Aumeens, 9 by Sudder Aumeens, and about 70 by Mounsiffs—making a gross total of 780 Courts for the administration of civil justice amongst the natives.

The Courts presided over by Mounsiffs have jurisdiction to the extent of 300 rupees, or £30 sterling; the Sudder Aumeens to the extent of 1,000 rupees, or £100 sterling. Appeals lie from these to the Zillah and City Courts, whose decisions are final.

The principal Sudder Aumeen Courts have cognisance of suits whether they originate in their own courts or are referred to them by the Zillah and City Courts, with an appeal to the Sudder Court, where the matter in dispute amounts to 5,000 rupees, or £500 sterling. The Zillah and City Courts exercise a jurisdiction to an unlimited amount from 5,000 rupees upwards, with an appeal to the Sudder Court at the several Presidencies. The courts presided over by Englishmen are assisted by native pundits or moulavies, as legal officers; and, judging from the average number of appeals from the decisions of the principal courts to the Queen in Council, it cannot be asserted that justice has not been most impartially and ably dispensed to the native litigants in India under our rule and the jurisdictions of the several Courts.

We have stated that the Bill now before Parliament is for establishing *High* Courts of Judicature in India. The Act will abolish only the Supreme and Sudder Courts, and, we suppose, is not intended to interfere with the jurisdiction of the lower tribunals. Lord Ellenborough, on Thursday evening, in the House of Lords, spoke at length in opposition to the measure, and proposed several amendments. He described its principle to be the amalgamation of the Sudder Court and the Supreme Court, which, he said, on account of the very different materials of which the two courts are composed, could not be satisfactory. He was especially opposed to giving to the Crown and not to the Governor-General of India the power of appointing and removing the judges, which he considered to be inconsistent with the proper functions of the Governor-General. Lord Ellenborough, moreover, was of opinion that the present condition of the Bar of England was not favourable to the immediate development of the proposed scheme, and he thought that it would be difficult to find amongst the English, Irish, and Scotch Bars a larger number of men competent to the satisfactory discharge of high judicial duties than would be sufficient to increase the number of each of the existing courts by one or two members. "Of all qualities of the mind" (said his Lordship) "perhaps the most rare is the judicial. The Bill proposes that 35 barristers shall be appointed to act as judges in India. My lords, there are not 35, nor perhaps five men, at the whole Bar of whom any one could with safety predict that they would make good judges. Success at the Bar is no proof that a man will make a good judge. Within my recollection, I have known more than one gentleman most successful at the Bar,—good, able men, and sound lawyers, who yet made extremely indifferent judges. The fact is, that the very qualities which enable a man to attain distinction at the Bar are the very qualities which unfit him for the duties of the Bench. Do you suppose that because 35 barristers of five years' standing each may be represented to you as so many Lord Mansfields, you will find ten—ay, or five of that number, possessing judicial minds? It is a gift of Providence, and most rare."

Most of our readers will agree with the observations which we have just quoted, but we are unable to ascertain how Lord Ellenborough arrives at the conclusion that there will be 35 new appointments for the Bar; for even assuming that none of the present judges of the amalgamated tribunals are appointed, only two-third of the new judges at the outside can be barristers, and, as we understand the Bill, the utmost number of judges that can be appointed under its provisions is forty-five. Lord Kingsdown did not oppose the principle of the Bill, although he had some doubt what the effect might be of introducing into the new High Courts persons who are not lawyers. He was of opinion that no fault could be found with the manner in which the Supreme Courts exercised their jurisdiction, and that an alteration in the Sudder Courts was all that was required. After the division upon Lord Ellenborough's amendment, which was lost, the Bill passed through committee, and is, no doubt, intended as a first step towards introducing throughout the entire of India one common system of jurisprudence and procedure, based as far as possible upon the precedents and models of this country.

A weekly contemporary recently published some severe strictures upon Lord Brougham for allowing the expenses connected with his new patent of peerage to be discharged out of the public purse. On last Thursday evening, in the House of Commons, this topic was the occasion of an animated discussion. Mr. Bernal Osborne objected to voting a sum of £512 for passing the patent under the Great Seal, upon the ground that the expense of patents of nobility conferred for distinguished services to the State are not paid for by the public, and that there was no reason why the case of Lord Brougham should be treated as exceptional. Other members of the House took the same view of the matter, and objected to the proposed vote. It appeared, however, from the statement of Mr. Gladstone, that there were precedents in favour of it. Four cases of this kind were mentioned; namely, those of Sir Henry Hardinge, Lord Fitzroy Somerset, Lord Canning, and Lord Elphinstone, the charges of whose patents of peerage were borne by the public. Lord Palmerston spoke in terms of high eulogy of the "great and eminent services" which Lord Brougham had rendered to the country; and the result of the discussion was that upon a division of the House for a reduction of the vote, there was a majority of twenty-six against the proposition.

The Wisbeach murder case forcibly raises a question of considerable interest not only so far as relates to the theory of our law, but also as regards the public sentiment. A man charged with the wilful murder of his wife pleaded guilty, and repeated the plea after the most earnest and solemn warning by Mr. Justice Wightman, the presiding judge upon the occasion. The crime as it appeared upon the depositions admitted of no reasonable doubt, and was one of savage barbarity. In consequence of the prisoner's plea of guilty, of course no evidence was adduced, and it is impossible for the public not to participate in the regret expressed by the learned judge, and by the counsel retained by the friends of the prisoner, that he should by his plea have prevented the trial. Mr. Justice Wightman expressed the general feeling when he said that in such cases the interests of public justice are best advanced by a full and open trial; and it is certainly an important question whether in every case involving capital punishment, it would not be more satisfactory even where the prisoner pleaded guilty to have the evidence for the prosecution presented to the Court, as if no such plea had been made, and to enable the friends of the prisoner to instruct counsel to watch the case. Such a proceeding would not be by way of trial of the prisoner, but only for the satisfaction of the public, and as some guarantee that the prisoner, in pleading guilty, is not the victim of any hallucination or any morbid notions about what is required of one in his position. Last year, Lord Brougham brought in a Bill to enable persons accused of crimes to obtain a trial without pleading to the arraignment, otherwise than by expressing a

desire to be tried upon the indictment. That Bill, however, did not go the length that we suggest, as it proposed still to enable prisoners to prevent the publicity of evidence by insisting upon a plea of guilty.

BARBARISM AMID CIVILIZATION.

The Northumberland-street mystery has received a natural solution. Those ardent votaries of the marvellous who hung about the Charing-cross Hospital, eager to catch the faintest murmurs of the proceedings of the court inside, have now been placed for a whole day upon a level with the entire public of the metropolis. We have, all of us, read the evidence, and probably we have all concurred in the verdict which terminated the inquiry. There ought to be a general vote of thanks to the reporters, who, in the exhausting circumstances of a crowded room, with all the windows closed to keep out the din of traffic, have described, for our information, the appearance and demeanour of the lady called Mrs. Murray, and have steadily persevered in taking notes of every word spoken both by her and by all the other important witnesses. By their means we enjoy the opportunity of learning what sort of sound is heard on the floor above when a human skull is being fractured with a pair of tongs. Perhaps one of the most curious facts proved was that the deceased, Roberts, was so much in the habit of discharging pistols in his chambers, that his upstairs neighbour had ceased to take any particular notice of the sound. We should think that even before this tragedy, the noise of pistol practice would have caused some slight sensation in the Temple or Lincoln's-inn; and it certainly does seem that Northumberland-street, Strand, where everybody confined himself to his own business, was as suitable a place as could be found in the heart of a great city for attempting to destroy life by fire-arms at noon. No doubt, many strange things are done in secluded sets of chambers. A few years ago there was a case of alleged starvation of a small servant in the Temple; but starvation, and even a good deal of cruelty besides, may be put in practice with very little noise. However, the deceased had gradually taught his neighbours to regard the sound of pistol practice with indifference; and having got so far as that it appears by no means improbable that if he had shot Major Murray dead, he might have made away with the body and removed all obvious marks of violence and blood, and might have stood as good a chance as any murderer ever did of immunity from human justice. With steadiness of aim he might have accomplished his cruel purpose undetected, although the chief station of the Metropolitan Police was almost within hearing of the shots he fired. Perhaps if another Waterloo-bridge mystery should defy solution it will not be difficult to believe that human remains might find their way into the Thames without having been carried any long distance. It was remarked at the time when that mystery occupied the police that many persons were stated to have disappeared, while traces of only one were found. The possibility of translation from broad daylight and the busy haunts of men into oblivion is proved, by what has happened to Major Murray, to be by no means visionary.

The clue to the explanation of Roberts's violence towards Major Murray was supplied by a piece of blotting paper, which showed that he had corresponded with the lady whose appearance as a witness is so carefully described by the reporters. Three letters of this lady to him and rough drafts of two of his to her were found among his papers. It appeared from the lady's letters that Roberts had sent to her a present of clothes for her baby, which had produced in her mind a transport of delight and gratitude. The principal topic in the two important letters is certainly the child and its garments; but they contain besides very warm expressions of thankfulness, if not of a more tender sentiment, towards Roberts. It is quite unnecessary to speculate upon the degree of meaning to be attached to the superlatives in which this lady deals. We may either accept her own account of the nature of her intercourse with Roberts, or we may imagine, if we please, that the happy days which she speaks of having spent with him were as real as in her estimation was the beauty of the "little gems of caps" and of the "pet" who was to wear them—we may suppose that she visited Roberts simply as a money-lender, or that her expressed wish to lay her head upon his shoulder was not merely a forcible way of stating that she was much obliged to him—whatever be the exact amount of credit which we give to this lady's story, there appears from it abundant reason why Roberts should have felt that Major Murray was in his way, and may have been tempted to get rid of him by violence. A lawless, ungovernable passion produced in Northumberland-street, Strand, in the nineteenth century, precisely the same effect as it has produced among people and in ages which are thought barbarous. There appears to have been formed by Roberts a deliberate design to invite Major Murray into his obscure chambers and to murder him. We can scarcely suppose that he began pistol practice twelve months before, in order to familiarise his neighbours with the sound of fire-arms; but it may have occurred to him that the habit in which he indulged so freely, might furnish the opportunity of destroying life without suspicion. If such a deed was to be done at all in such a place, it might probably be done with quite as much hope of secresy at noon as at midnight. There would have been no reasonable pretext for drawing Major Murray into the chambers except during business hours, and perhaps neither London nor the country offered any spot so eligible for murder as this bill-discounter's office close to Charing-cross. The only person whose proximity seemed likely to prove inconvenient was a painter, who was at work close to Roberts's door,—and he was sent upon a curious errand to buy a linnet immediately before the tragedy began. It might be expected, as indeed it happened, that Major Murray would be seen walking with Roberts towards his chambers; but it was not likely that any person would know for certain that he had not again quitted them, or would attach so much importance to the impression that he was still there, as to found on it any suspicion that he had suffered violence. The calculation that Northumberland-street was a reasonably eligible place in which to commit murder, appears to rest on grounds which are solid, although not, at first sight, obvious. The experience of many offenders against the law has taught them that they are nowhere safer than under the very nose of the police. If Roberts was urged by an ungovernable passion to seek the life of Major Murray, he does not the less appear to have adopted prudent measures, both for the destruction of his rival, and for his own security. He seems to have shewn the cunning as well as the bloodthirstiness of a tiger.

There does not seem to be any reason to doubt that Major Murray spoke the truth unreservedly in his evidence. He stated that he was addressed by Roberts as a director of the Grosvenor Hotel Company on the pretext that a client of Roberts desired to advance money to that company. Roberts requested him to come to his office to talk about this business. He was conducted into the back room and left for a minute or two alone. "I thought it was the most extraordinary place I had ever seen—torn papers, letters, and pictures lying about—a most disreputable looking place." Roberts returned into the room and they discussed the terms of the proposed loan. Major Murray then asked for a card of the address of Roberts as the person proposing it. Roberts got up as if to look for his card, and presently Major Murray felt a slight touch in the back of his neck, and the report of a pistol followed. The Major dropped from his chair paralyzed, and before he could recover himself Roberts fired another pistol at his tem-

ple. Then the Major began a fierce struggle for his life, and struck or tried to strike Roberts with every thing of which he could make a weapon. A more savage combat was never fought, and probably a more terrible spectacle was never seen than this room full of dust and blood, where lay the mangled body of its occupant. Major Murray displayed in his escape a degree of strength and agility which is wonderful considering how he had been wounded. The amazement of London at this deadly strife in its very centre was unbounded, and at first it seemed almost impossible to frame any conjecture as to the origin of it. But inquiry has produced a simple and sufficient elucidation. The passions of men have been aroused in all ages by the same causes and have found vent in the same acts of violence. Certainly the theory of man's continued moral progress has undergone a shock by this convincing proof that barbarism co-exists with civilization. The result of the inquiry has proved the efficiency of the police, and the inquiry itself has proved that that efficiency is indispensable.

EVIDENCE IN CRIMINAL CASES.

A pamphlet* recently published contains all the leading arguments usually advanced in support of the present state of the law of evidence in criminal cases. The author states, for the purpose of refuting Mr. Taylor's deductions, the two fundamental axioms of evidence upon which he has mainly founded his thesis. These are as follows:—1st. "In all judicial investigations the object to be attained is the discovery of truth, and no species of evidence ought to be excluded which can materially aid in that discovery." 2nd. "The rules of evidence ought, so far as is practicable, to be the same in civil and in criminal proceedings." The author impugns these propositions, and also Mr. Taylor's application of them to the views maintained by him. Mr. Worsley appears to us to have overthrown Mr. Taylor's first redoubt, and to have shown that the burden of proof does not rest upon the advocates of the present system. It is a mere *petitio principii* to state, as he does, that the "present law of evidence in criminal cases is in direct conflict with both these axioms." The present rule of law certainly precludes garrulity on the part of the accused; but the question at issue is whether it prevents the giving of useful evidence. Mr. Worsley remarks that Mr. Taylor in his assumption, commences suit by signing judgment. The critic cites against the author of the Treatise on Evidence the powerful names of Lord Chief Justice Hale, Sir Michael Foster, Sir W. Blackstone, Serjeant Hawkins, and of Reeves, author of the "History of the Common Law," besides the more recent treatises of Starkie, Phillips, Russell, and Best. It is not likely that these authorities would have let the law, so strongly censured by Mr. Taylor, pass without comment, if they considered it to be in direct conflict with the discovery of truth. Mr. Worsley examines Mr. Taylor's criticism of the reasons usually urged in defence of the present system of criminal procedure. These reasons are, "first, that the admission of the testimony of defendants in criminal trials would mislead juries; next, that it would increase the crime of perjury; and, lastly, that it would expose the accused to unfair and oppressive examination." It must be admitted that the first reason has nothing in it. Indeed, it is surprising that it has ever been put forward; for, no statement from the accused is likely to have much weight against the oaths in the witness-box. Mr. Taylor allows some force to the second reason; and, as his opponent adds, the addition of an oath would only tend to bring the ceremony into contempt, and would not make a voluntary statement more credible than at present. As to the third reason, Mr. Taylor seems to think that he evades its force by recommending merely permissive and not compulsory examinations, except that if the accused do volunteer to testify, he should then become liable to cross-examination. It is replied that it is the innocent man who is most likely to tender himself, and thus lay a foundation for a perilous cross-examination, and that those who would decline to testify would be prejudiced in the minds of the jury. Mr. Taylor suggests that as assaults, libels, and frauds may be dealt with either civilly or criminally, there is an unfair advantage given by the present law to an accuser, who proceeds criminally; just as an advantage is gained by a prosecutor in making the witnesses of the real offender co-defendants, and thus precluding them from giving evidence. Mr. Worsley adds that the defendants can, under all circumstances, make their own statements, and that such as are acquitted may then be adduced as witnesses for the others. The device, we may add, is well known, and when observed by the jury to have been acted upon in any case in order to shut out evidence, materially damages the cause of the complainant. The objection to Mr. Taylor's recommendation which we consider conclusive, is that the legal maxim *Nemo tenetur seipsum accusare* already does for the prisoner what some advocates for his interrogation mean to do for him. If the facts given in the evidence for the prosecution be consistent with the prisoner's explanation of them as given under the present system, the jury are bound to acquit him; *Reg.* v. *Crowhurst*, 1 C. & K. 376. The objections against the interrogation of prisoners apply with equal force to an examination of their wives. The legal and social identity of husband and wife is not, perhaps, as likely as the personal interest of the accused to lead to perjury, or to the incrimination of others. But, at all events, such interrogations are, in our opinion, liable to a peculiar objection, as they tend to undermine that social confidence which is the germ of the more extended political sympathies and patriotic feelings of mankind.

When a failure of justice occurs, as in the case of the Road murder, we are apt to look for a remedy in a change of the law. Accordingly, since that murder occurred, the question of the judicial interrogation of prisoners has received unwonted attention. Upon the theoretic merits of the proposed change we offered some general comments, *ante*, vol. 4, p. 882. We cannot but feel surprised that Mr. Taylor should, for the sake of a doubtful harmony of the rules of evidence, seek to assimilate the heterogeneous elements of civil and of criminal law and procedure. When parties to civil actions depose on oath, they are only following out what their very entry upon litigation implies—viz. that they are prepared to contradict one another. No such presumption arises as to the parties or witnesses in a criminal proceeding, unless in cases where an informant expects a reward or penalty, and no one supposes that a disinterested witness will be tempted to prop up one lie, perhaps an inadvertent one, by ten additional perjuries. Moreover, a defendant in a civil case is rarely tempted to incriminate others; a defendant in a criminal proceeding is, on the contrary, always strongly tempted to do so. We had, therefore, much rather see professional efforts directed to the appointment of a public prosecutor than to effecting a change in our ancient laws of evidence in criminal proceedings.

* "An Examination of Mr. Pitt Taylor's Thesis 'On the Expediency of passing an Act to permit Defendants in Criminal Courts and their Wives or Husbands to Testify on Oath.'" By FRANCIS WORSLEY, of the Middle Temple and Home Circuit, Barrister-at-Law. London: Butterworths. 1861.

ON THE LAW OF TRADE MARKS.

No. VIII.

(By EDWARD LLOYD, Esq., Barrister-at-law.)

Of injuries arising out of a breach of trust or confidence.

We have hitherto considered only those cases in which an injury has been suffered by a manufacturer or a trader, or by an author or publisher of a literary work, from the presentation to the public of something apparently the production of the original proprietor, but which is in fact a spurious imitation only, put forward by a rival in the market. There are also cases which we shall now proceed to examine, where the existence of a contract or agreement between the parties for the conduct of any business involving a secret process, and the consequent communication of such a secret, has introduced a somewhat different sort of consideration into the rules which the Court has laid down in restraining the breach of such an agreement, the divulging of the secret in trade, and generally the violation of the confidence reposed by one of the parties in the other.

The earliest of these cases, *Newbury* v. *James*, 2 Mer. 416, shows the difficulties that have been felt in dealing with questions of this sort. The plaintiff here claimed to be entitled, under the provisions of certain agreements entered into by the ancestors of himself and the defendant respectively, to the exclusive right of selling certain powders and pills well known as "James' Powders" and "Analeptic Pills," as agent to the defendants, and prayed a decree for specific performance of agreements; the pills and powders were made up by the defendants from an alleged secret recipe, and it was also sought to restrain them from communicating this recipe to any other person without the plaintiff's permission. The Court does not appear to have looked upon this secret recipe in light of property—the subject of certain agreements as to the manner of enjoyment, and as clearly liable to injury from divulgation; had this been done I cannot see that there would have been much difficulty in framing an injunction in restraint of such a contemplated injury, even though the Court might not have been able to decree the specific performance of the agreement. On this head it is observed by the Lord Chancellor that the difficulty was how to decree specific performance of the agreement. "Either it was a secret or it was none. If a secret, what means did the Court possess for enforcing its own orders? If none, there was no ground for interfering;" that "if the art and method of preparing the Analeptic Pills for which no patent had been procured were a secret, what signified an injunction, the Court possessing no means of determining on any occasion whether it had or had not been violated? The only way in which a specific performance could be effected would be by a perpetual injunction; but this would be of no avail unless a disclosure were made to enable the Court to ascertain whether it was or was not infringed;" and that it was necessary for a person coming to that court, to complain of the breach of an injunction, first to show that the injunction had been violated. The injunction was therefore dissolved.

So also in *Williams* v. *Williams*, 3 Mer. 157, where the Court granted a motion to dissolve an injunction, obtained *ex parte*, to restrain the communication of a similar secret. It was there said that if on a treaty with his son (the defendant) while an infant, for his becoming a partner when of age, the plaintiff had, in the confidence of a trust reposed in him, communicated to him the secret of the recipe, and given him possession of certain stock-in-trade (mentioned in the bill); and instead of acting according to his trust, the son had taken to himself the exclusive dominion over the stock-in-trade, and begun to vend various articles without permission, so far the injunction was right in compelling him either to perform or to waive the agreement. But it was said that the Court would not struggle to protect secrets in medicine of that sort; that it was different in the case of a patent, because there the patentee was a purchaser from the public, and bound to communicate his secret at the expiration of the patent. The question, however, whether a contracting party was entitled to the protection of the Court in the exercise of its jurisdiction, to decree the specific performance of agreements, by restraining a party to the contract from divulging the secret he had promised to keep, was declared to be one requiring much consideration.

This point has, however, since been settled with tolerable distinctness; in *Dietrichsen* v. *Cabburn*, 2 Ph. 52, Lord Cottenham, whilst noticing what was in the argument, alleged to be a recent dictum of the Vice-Chancellor of England, "that the Court will not prohibit the violation of a negative term in an agreement, unless it has the power of enforcing the positive part of the same agreement," says, "I cannot but think that there has been some misapprehension of the meaning of the Vice-Chancellor, as applied in this supposed rule; for in the case of *Kimberley* v. *Jennings* (6 Sim. 340), his Honour, in stating that the violation of a negative term in an agreement will not be restrained in cases in which the positive part of it cannot be enforced, exemplifies it by saying that if the agreement cannot be performed in the whole, the Court cannot perform any part of it. To this proposition so explained I entirely assent." This means only that where there is such an infirmity in an agreement that it cannot be performed in all its parts, the Court will not by injunction compel a defendant to perform the one part, it being at the same time unable to compel the plaintiff to perform reciprocally the other, namely, that which was positive in the agreement, if its aid should be appealed to by the defendant in order to procure for him the benefit of the contract or agreement.

We find, however, that in *Yovatt* v. *Winyard*, 1 J. & W. 394, the defendant, who had been employed as the plaintiff's assistant under an agreement by which he was to have a salary, and be instructed in the general knowledge of the business, but not in the secret of manufacturing the medicines sold, was restrained from divulging those recipes to which he had surreptitiously obtained access; and from making up and selling the medicines compounded from the recipes, with certain printed instructions almost literally copied from the plaintiff's. In this case the decree proceeded on the ground of trust; as it did likewise in the case of *Green* v. *Folcham*, 1 S. & S. 398, where the defendant was held to be the trustee of the secret of compounding "the golden ointment," under the trusts of a certain settlement, and was ordered to account for certain mesne profits made by him by the sale of the ointment; the Court even going so far as to direct a valuation of the secret to be made for the purpose of administering the trust property.

Again, in *Tipping* v. *Clarke*, 2 Hare 383, a case arising out of a dispute between two merchants, in the course of which the defendant in a letter to the plaintiff, stated that he had acquired a knowledge of his books and accounts, and that he intended to make a public exhibition of them, we have a recognition of the same doctrines thus stated in the second and third grounds, which Vice-Chancellor Wigram gives in his judgment, "that of breach of contract between the parties, and that which is common to all cases, that the Court interposes to prevent a positive wrong, the consequences of which cannot be adequately measured or repaired in damages." There was no doubt the question of the property in the account-books, but looking at the case with reference to the other two heads it was clear that every clerk in a merchant's office is under an implied contract to keep the secrets of his employer's business, and that the defendant's information could only be derived from some breach of such a contract; and further, that it was probable a serious injury would arise from the publication of such accounts, which could only be relieved against by injunction. The question

was discussed only on exceptions to the defendant's answer, which were allowed, so that it must not be considered as laying down any final rule. The case, however, seemed to me worthy of notice, as lying so near on the boundary line of the subject under consideration.

Morison v. *Moat*, 9 Hare 241, is, I think, the latest case which we need consider under this head. It appeared that the plaintiff and defendant had for some years carried on in partnership the business of making and selling "Morison's Universal Medicine." On the dissolution of the partnership, the defendant, who must under the circumstances stated be considered to have retired from the business, set up for himself, and made and sold the original medicine under its former name as prepared by him. It appears that the plaintiff, in praying for an injunction, did not omit to put forward the ground of fraud or misuse of his labels and trade-marks by the defendant; he, however, relied on this only in aid of the principal head—that of breach of faith and contract; and it is on this ground that the decision rests. The Vice Chancellor, noticing the cases which I have here cited, as also *Abernethy* v. *Hutchinson*, 3 L. J. Ch. 209, and *P. Albert* v. *Strange*, 1 Mac. & G. 25, to which I shall allude hereafter, says "That the Court has exercised jurisdiction in cases of this nature does not, I think, admit of any question. Different grounds have indeed been assigned for the exercise of that jurisdiction. In some cases it has been referred to property, in others to contract; and in others again it has been treated as founded on trust or confidence—meaning, as I conceive, that the Court fastens the obligation on the conscience of the party, and enforces it against him in the same manner as it enforces against a party to whom a benefit is given, the obligation of performing a promise on the faith of which the benefit has been conferred." The Vice-Chancellor here recognises the ground of property, a ground which brings all these cases under the same general head as those of trade-marks; and it is worthy of remark that while he seems to consider this as only a subsidiary ground for the decree, he limits the operation of that decree to restrain only a given use on the part of the defendant of the name and marks of the plaintiff, and from using the secret in compounding the medicine, not the general use of the name of Morison in the manufacture or sale of any medicine; nor does the injunction restrain the defendant from communicating the secret. This, I confess, seems to me very much like the recognition of the same species of compound property in the secret recipe, sold under a certain name as exists, in my opinion, in the case of the trade-marks; and I cannot but remark that there seems to be traceable in the decisions on this head, as on the other, the same progress, from a refusal to recognise any such sort of property, and a determination to found the relief granted on any other head, to the opinions and principles laid down in *Morison* v. *Moat*, and in *Millington* v. *Fox*, and *Welch* v. *Knott*.

The conclusion to which I have thus arrived appears to me to be confirmed by the expressions of Vice-Chancellor Knight Bruce in the case of *Prince Albert* v. *Strange*, 2 De G. & S. 652; and the observations of the Lord Chancellor on the same case on appeal (*vide* sup.). The former of these learned judges pursues the following train of argument:—That it is upon the principle of protecting property that the common law, in cases not aided nor prejudiced by statute, shelters the privacy and seclusion of thoughts and sentiments committed to writing, and desired by the author to remain not generally known; that, such being the nature and foundation of the common law as to manuscript, its operation cannot of necessity be confined to literary subjects. "Wherever the produce of labour is liable to invasion in an analogous manner, there must be a title to analogous protection or redress." His Honour also quotes with approbation what was said by Mr. Justice Yates in *Millar* v. *Taylor*, 4 Burr. 2303, that an author's case is exactly similar to that of an inventor of a new mechanical machine, that both original inventions stand upon the same footing in point of property; and that the immorality of pirating another man's invention is as great as that of purloining his ideas.

In order completely to understand the view which was taken by Lord Cottenham of this case, it is necessary to state the main facts involved—they were as follows:—that the defendant Strange had published a catalogue of certain etchings, the work and private property of Prince Albert and the Queen. This catalogue, descriptive of the works themselves, also advertised a public exhibition of copies surreptitiously obtained by one of the defendants, and the whole professed to be by the permission of her Majesty and the Prince Consort. His lordship, assuming that the right of the plaintiff to an injunction restraining the defendant from dealing in any manner with the etchings themselves, was clear, considered that the only question was as to the catalogue; and especially as to the representation there held out that its publication was by permission of the Queen and her Consort. This he considered to be a complete case of an intention to sell under a false representation; and that as all manufacturers are, as a matter of course, restrained from selling their goods under similar misrepresentation tending to impose upon the public, and to prejudice others, it would be singular if the like restraint should not be imposed in the case before him.

It may, no doubt, be urged that in the case of trade-marks there is no such property as this; no doubt there are many expressions in the older cases which would seem to justify such an assertion. I will admit that there is no property in a mere name or mark; but by the use of such a name or mark injuriously affecting the rights of any person who has established his claim to use it to distinguish articles of his manufacture, according to recent decisions at any rate, there is an injury done to property. Having therefore once fixed the notion of this species of property, the analogy between the cases to which I have referred above, and those of trade-marks, more properly so called, is, to my mind, no longer far-fetched or illusory.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF CHANCERY.—LINCOLN'S-INN.

(Before the LORD CHANCELLOR.)

July 20.—*Bartlett* v. *Wood*.—This was an appeal from Vice-Chancellor Stuart. The suit was instituted for the administration of an estate, and also for the purpose of setting aside a sale alleged to have been improperly made by the defendant, who was a trustee under Bartlett's will. The Vice-Chancellor at the hearing of the cause, directed certain enquiries to be made respecting the sale, which resulted in the allegations of impropriety being disproved. Upon the cause, however, coming before the Court on further considerations, his Honour directed all the costs to be paid, as between solicitor and client, out of the testator's estate, which was bequeathed by the will in trust for the infant children of the testator. The question raised by the appeal was as to the practice of the Court in directing the payment of costs.

The LORD CHANCELLOR said there was no greater inducement for persons to come into the Court of Chancery with unfounded litigation than the unfortunate degree of uncertainty which existed upon the subject of costs. As a general rule, the costs ought to follow the event. In administration suits, however, it behoved the Court to attend most carefully to the subject of costs, and the rule ought, in his (the Lord Chancellor's) opinion, to be that those costs only ought to be allowed out of the estate which had been incurred in proceedings originally directed with a reasonable and proper foundation for the benefit of the estate, or which had in their result conduced to that end. In the present case he should confine his observations to the costs occasioned by the allegations in the bill in reference to the sale. Those allegations charged fraud on the part of the

trustee; but upon enquiry, all of them were disproved, and the Vice-Chancellor, through his chief clerk, certified that they were without foundation. Nine-tenths of the whole costs had been caused by those allegations, and the question of costs had now become more important than the original subject of complaint. His lordship directed that so much of the plaintiff's costs of the suit as had been incurred through the allegations of fraud in the bill should be disallowed, and that the remainder of his costs should be taxed as between party and party.

ROLLS' COURT.

(Before the MASTER OF THE ROLLS.)

July 22.—*The Suitors' Fee Fund.*—Upon the hearing of a cause of *Wilkinson* v. *Duncan* a question was raised as to the payment out of court of a sum of money upon the personal indemnity of the party receiving it. His Honour said that as the Suitor's Fee Fund would be liable to repay the amount in case the person receiving it failed to do so, it became important, after the suggested appropriation of the Suitors' Fee Fund, that the Court should be very careful in payment of moneys in these cases. He had had as many as 60 or 70 applications for payment of moneys out of the fund, and in some cases upwards of 60 years had elapsed since they had been paid in. Scarcely a petition day passed without some application being made for payment of money out of the fund.

SUMMER ASSIZES.—MIDLAND CIRCUIT.

LINCOLN.

July 20.—The Lord Chief Baron opened the commission here to-day. There were 16 causes entered for trial.

DERBY.

July 25.—The commission was opened in this town to-day by Mr. Justice Willes.

HOME CIRCUIT.

LEWES.

July 19.—The commission was opened here to-day. There were only 9 causes entered for trial.

The Right Honourable Edward Cardwell has been appointed Chancellor of the Duchy of Lancaster.

Mr. Edwin Wilkins Field, 36, Lincoln's-inn-fields, Middlesex, has been appointed a perpetual commissioner for taking the acknowledgments of deeds by married women in and for the county of Middlesex, and for the cities of London and Westminster.

Parliament and Legislation.

HOUSE OF LORDS.

Tuesday, July 23.

SALMON FISHERIES BILL.

Lord STANLEY OF ALDERLEY moved the second reading of this Bill, and explained that it was introduced in order to forbid practices which had considerably diminished, and still continued to diminish.

The Earl of MALMESBURY thought the measure a practicable one, and such as ought to become law.

After a few observations from the Earl of LONSDALE and Lord LLANOVER the Bill was read a second time.

HOUSE OF COMMONS.

Monday, July 22.

BANKRUPTCY AND INSOLVENCY BILL.

The order of the day for resuming the consideration of the Lords' amendments in this Bill having been read,

The ATTORNEY-GENERAL said, he presumed, after the decision arrived at the other night for restoring the clauses relating to the appointment of the chief judge, that the House would not now think it necessary to discuss at any length the other subsidiary amendments consequent upon that change.

Sir H. CAIRNS thought it would be useless to discuss the amendments which treated of the office of the chief judge.

The House then disagreed accordingly with the various amendments made by the Lords on the subject of the chief judge.

On clause 21, in which the Lords had increased the number of official assignees from five to eight,

The ATTORNEY-GENERAL said, as the provisional assignee of the Court for the Relief of Insolvents would, by the 26th clause, be constituted an official assignee of the Court of Bankruptcy, if the present amendment of the Lords were agreed to, and eight were substituted for five, the number of official assignees in London would, in fact, be increased to nine. That would, he thought, be entailing useless expense on the country. He therefore moved that the Lords' amendment be disagreed with.

Sir H. CAIRNS said the Government had given notice of two cardinal points on which they proposed to disagree with the Lords' amendments. The one referred to the chief judge, which had already been settled, and the other, which had still to be determined, referred to the official assignees. The present amendment had been introduced by the Lords in consequence of the general view they took with respect to the official assignees. Hitherto all bankrupt estates had been vested in the official assignees and the creditors together, who acted through one and the same solicitor in realizing the whole of the estate and dividing it among all the creditors. No doubt there had been a great deal of complaint in the commercial world on the subject of the official assignees. But the House must endeavour to see what was the origin of that complaint. It did not originate because the official assignees did not do the business properly, or collect the debts and divide the assets with rapidity among the creditors, but rather because the official assignees were entitled to take a very large percentage from the sums recovered, and thereby the amount divisible among the creditors was very much diminished. Those objections were got rid of by this Bill, because it placed the official assignees upon salaries instead of percentage, the five official assignees in London receiving £1,200 a-year, reducible to £1,000, and those in the country £1,000 a year, reducible to £800. The Bill also provided that a bankrupt's estate should at first be vested in the official assignee, but that when the creditors' assignee was appointed all control of the estate should be taken from the official assignee, except that he was to collect the debts due to the bankrupt under £10, while the debts of a larger amount would be collected by the creditors' assignee. In the House of Lords exception had been taken to that arrangement, and it was urged that the consequence would be that the official assignee and the creditors' assignee would have to employ separate solicitors, of course entailing upon the estate two bills of costs. Another difficulty would arise from the proposed arrangement. The official assignee would require the bankrupt's books to enable him to collect the debts under £10, while the creditors' assignee would want them for the purpose of collecting the larger debts. That state of things would lead to inconvenience and antagonism, as well as to confusion and expense. There was an idea which was prevalent in the commercial world that if the Lords' amendments were agreed to there would be no mode by which the creditors could get rid of the official assignee if they desired to place the management of an estate in the hands of trustees selected by themselves. That, however, was a mistake, because under the arrangement clauses any body of creditors desiring to wind-up an estate without the assistance of an official assignee could do so. But he would ask whether it was judicious to have five official assignees at £1,200 a year and seven or eight at £1,000 a year solely to collect debts under £10. It might be said, on the other side, that official assignees might be chosen as trustees by the creditors; but if that were so he thought those officers should stipulate for their remuneration with those who employed them. The suggestion that they might be sometimes chosen as trustees by creditors rather militated against the assertion that official assignees were extremely distasteful to the mercantile community. He submitted, therefore, that there was much force in the opinions expressed by the House of Lords, but, looking at the period of the session, and considering that this point was not absolutely essential, he should not invite the House to divide in opposition to the Attorney-General's motion.

Mr. MURRAY believed that in the London district one official assignee to each commissioner was quite sufficient for the work to be done. He thought the time had arrived when creditors should take the management of bankrupt estates into their own hands, for the expenses incurred under the present system were far greater than any bankrupt estate ought to bear. Under the management of official assignees creditors were apt to fancy that everything was being done that ought to be done, whereas estates were very much neglected, and the interests of creditors left to suffer. On these grounds he was opposed to the Lords' amendment.

Mr. GLYN said that in the city of London the desire to prevent estates from falling into the hands of the Court of Bankruptcy was so strong that trustees had exposed themselves to the greatest possible legal difficulties in consequence.

The ATTORNEY-GENERAL said that the official assignees were brought into existence by the Act of 1831. The evils connected with the management of insolvent estates by the creditors' assignees were at that time considerable, and caused great dissatisfaction. But, in endeavouring to avoid one evil, the Legislature fell into the other extreme. The creditors' assignees, in consequence of not being subject to an audit neglected their duty. The official assignees then collected the debts, and had the management of very considerable funds, yet no proper audit of their accounts was instituted, or was in operation. A form of audit by the commissioner no doubt existed, but the commissioner had not that knowledge of the matter which was necessary to make him a satisfactory or competent auditor. A return had been made in 1858, with reference to the number of official assignees who had died or been removed, and who had been defaulters. Four of the official assignees in London, and one in the country, had defaulted, the amount of their defalcations being not less than £110,000.

Mr. BOVILL said that official assignees had been appointed because it was found that creditors' assignees did not perform their duties. This matter was fully considered on the second reading, and as various mercantile bodies had expressed a strong feeling for the clauses which passed that House, he should not oppose their restoration to the Bill, but he suggested that, instead of providing that all debts under £10 should be collected by the official assignee, it should be left to the creditors in each case to determine the amount up to which the official assignee should collect.

Mr. HENLEY observed that, as it was the wish of the House that the general question should be decided on this clause, he was disposed to agree with the Government and to disagree with the amendment of the Lords. He thought it was impossible for any one who paid attention to what passed not to know that the commercial body wished to get rid of the official assignee to a great extent, and to have greater facilities for making their arrangements, and if they thought that they could manage their affairs better than the lawyers he did not see why they should not be allowed to do so.

The Lords' amendment was then disagreed with.

In clauses 22 and 27 certain amendments of the Lords were disagreed with, and some were concurred in.

Sir F. KELLY moved that the House should disagree with so much of the new clause introduced between clauses 97 and 98 as deprived debtors whose assets did not amount to £150 of the power of petitioning for an adjudication in bankruptcy against themselves.

The ATTORNEY-GENERAL seconded the motion. The effect of the clause as it now stood would be to prevent any person who might not be able to show assets to the amount of £150 from obtaining a discharge from his debts without going within the walls of a prison and remaining there for some weeks.

Mr. MALINS and Mr. BOVILL also supported the motion, which was agreed to.

On clause 100,

The SOLICITOR-GENERAL stated that paragraph C had been inserted by the Lords with respect to debts contracted or liabilities incurred after the passing of the Act, on which considerable difference of opinion prevailed; but with a view to the passing of the Bill he was not disposed to ask the House to disturb the principle of the amendment. The Lords, however, appeared to have overlooked the fact that by the law as it now stood, if a debtor not a trader lay in prison, any execution creditor was at liberty to apply by petition to the Insolvent Debtors' Court, and obtain a vesting order, the effect of which was to vest all the present and future estate of the debtor up to the time of his discharge, real and personal, in the assignee of the Insolvent Debtors' Court, to be administered for the benefit of creditors. He proposed after the word "trader" to insert these words;—"And not being at the time a prisoner against whom the creditors would be entitled to obtain a vesting order in insolvency if this Act had not passed." With a view to carry into effect the object of the Lords in this clause he would also add a proviso to the 164th clause to the effect that no person shall be liable by virtue of this Act to any criminal charge or penalty in respect of any matter which may have occurred before the passing of the Act to which he would not have been liable if this Act had not passed. He had had the advantage of communicating these amendments to his hon. and learned friend the member for Belfast, and he was authorised to say that he had no objection to them.

Mr. HENLEY thought the proposal of the hon. and learned gentleman quite a fair one. It left parties as they were, and that was all that was wished or contended for.

The words proposed were then inserted.

Mr. MALINS said that, as to the 101st clause of the Bill, that clause would enable a rich debtor to set his creditors at defiance, and to keep his property while his debts remained unpaid. The principle was plain, that no man had a vested right in dishonesty, and therefore he said that a non-trader, with ample property to meet his debts, ought to be made to pay them, and the law should hold out no inducement to him to remain abroad in order to evade payment. He should take the opinion of the House upon the clause, and therefore moved that the Lords' amendment be expunged.

Mr. HENLEY hoped the Government would support the clause as recommended by themselves, and that they would not, by agreeing to the proposition of the hon. member for Wallingford, endanger the passing of the Bill.

Mr. HADFIELD supported the proposal of the hon. member for Wallingford, because he thought there ought to be no distinction between the classes in respect to paying their debts.

The ATTORNEY-GENERAL declined to accede to the amendment.

Mr. WALPOLE opposed the amendment.

After a few words from Mr. MALINS,

The amendment was withdrawn, and the House agreed to the Lords' amendment.

Several other amendments of the Lords having been considered, were in some instances agreed to, and in others dissented from.

On the motion of the SOLICITOR-GENERAL, a proviso was added to the 164th clause, to the effect that no person should be liable to be prosecuted for any offence after the passing of the Act for which he would not have been liable to be prosecuted if the Act had not passed.

On the motion of Mr. MOFFATT, the House disagreed with the Lord's amendment in clause 200, making the assent of three-fourths in number of the creditors necessary to the validity of any deed executed by a debtor, and restored the clause to its original shape by the insertion of the words "a majority in number of the creditors representing three-fourths of the value."

Similar words were, on the motion of Mr. MOFFATT, inserted in clause 208.

The remaining amendments, which were of a formal nature, having all been disposed of,

The ATTORNEY-GENERAL moved that a committee be appointed to draw up reasons for disagreeing with the Lords' amendments, and to manage a conference with the other House.

The motion was agreed to, and the committee nominated as follows:—The Attorney-General, the Solicitor-General, Sir G. C. Lewis, Sir G. Grey, Mr. Murray, and Mr. Malins.

Wednesday, July 24.

INDICTABLE OFFENCES (METROPOLITAN DISTRICT) BILL.

On the order of the day for resuming the adjourned debate on the second reading of this Bill,

Sir G. C. LEWIS said that he was favourable to the measure, but in the absence of the right hon. gentleman who had charge of the Bill (Mr. Walpole) he would move that the order be postponed until next Wednesday. At the same time, he did not think it likely the Bill would pass during the present session.

LUNACY REGULATION BILL.

The ATTORNEY-GENERAL moved the second reading of this Bill, the object of which, he said, was twofold, namely, to provide for a more frequent visitation of the lunatics under the care of the Court of Chancery, and to diminish the expense of the procedure. The recommendations of the committee of 1858, who considered this subject, were in some respects adopted in the Bill, but the recommendation of the committee that the care of the Chancery lunatics should be transferred to the lunacy commissioners was not followed, as it was thought that the duties of those commissioners were at present sufficiently onerous.

Mr. HENLEY: The provision of the Bill which gave a new power of dealing with the property of lunatics under a certain amount was as important as any in the Bill. He deemed it a beneficial provision, but its advantage would be very much impaired if these unfortunate persons, scattered all over the country, were to be driven up to one of the Chancery offices in London to get the benefit of the proposed arrangement. There ought to be some machinery by which the benefit of that provision might be more easily obtainable over the length and breadth of the land. There was a clause in the Bill enabling pensions to be given to the present visitors, but he did not know on what principle they were supposed to be entitled to pensions at all; and while the Bill enacted that every lunatic should be personally visited twice at least in every year, the only machinery by which that object could be effected was cut out of the measure. After pointing out what he conceived to be other deficiencies in the Bill, he concluded by moving, by way of amendment, the postponement of the second reading for a week, in order that his right hon. friend the member for Cambridge University, who had devoted so much time and attention to the subject, might have an opportunity of urging whatever objections he entertained to the measure.

The ATTORNEY-GENERAL thought that if he undertook not to move the committee on the Bill until that day week, the object which the right hon. gentleman had in view would be answered.

Mr. HENLEY understood that his right hon. friend wished to oppose the second reading.

After a few words from Mr. CONINGHAM and Sir G. GREY,

Mr. HENLEY consented to withdraw his amendment on the understanding that his right hon. friend would not be considered as precluded from opposing the Bill on the motion that the House resolve into committee upon it.

The amendment was accordingly withdrawn, and the Bill was read a second time.

PROSECUTIONS EXPENSES BILL.

Upon the motion for the second reading of this Bill,

Mr. HENLEY observed that in 1846 the payment of expenses for prosecutions was given to the justices; but the Treasury kept a very strict hand over them, and it was even thought by many that the strictness was carried so far as to impede the administration of justice. By this Bill the Government might sanction a higher scale of fees than at present existed, but the difference of cost was to be borne by the counties. The Treasury might go on decreasing its own scale, and this still further increased the burden cast upon the rateable property of the country.

Sir G. C. LEWIS would be glad to withdraw the Bill if such a course would not be inconsistent with the engagements into which he had entered. There was a scale of allowances to witnesses, and the payments out of the Consolidated Fund were regulated according to that scale, but complaints were made in some counties that that scale was insufficient, and many representations of that nature had been made to him, especially from Yorkshire and Lancashire. It was not considered advisable to raise the scale in all the counties throughout England, because in many parts the present scale of allowances was considered sufficient, neither was it considered desirable to have different scales of allowances for different counties. It was therefore proposed to give the magistrates power to make supplemental allowances, and to charge the cost upon the county rates. That power, however, was permissive and not compulsory.

Mr. S. ESTCOURT thought that as the insufficiency of the present scale of allowances was mostly felt in Lancashire and Yorkshire, it would be better to limit the operation of this Bill to those counties.

Sir. W. MILES said the dissatisfaction at the present scale of allowances was more widely extended than his right hon. friend seemed to think. The commission which inquired into this subject two years ago, and of which he was a member, suggested some alterations, but certainly nothing like the provisions of this Bill, to give the Treasury power still further to reduce the scale of allowances. In one respect, at least, he hoped the Bill would be altered. If the justices sent in a new scale, and that scale was sanctioned by the Home Secretary, it would become a permanent scale, while the charge upon the county-rate might afterwards be increased by a further reduction in the scale allowed by the Treasury.

Sir G. C. LEWIS had no objection to transfer the power from the Home Secretary to the county magistrates.

Mr. HENLEY objected to that, as it would entail all the odium upon the justices.

It being now a quarter to six o'clock the debate was adjourned.

Thursday, July 25.

COPYRIGHT OF DESIGNS BILL.

This Bill was read a second time.

Recent Decisions.

EQUITY.

SOLICITOR'S RIGHT OF LIEN ON PAPERS.

Webster v. *Le Hunt*, V. C. K., 9 W. R. 804.

We considered lately (p. 618) what is the solicitor's right of lien on papers where he has discharged his client, and we showed that the client is entitled in such a case to have his business conducted with as much ease and celerity and as little expense as if the connection had not been dissolved. In order to attain this object, he is entitled to have his papers delivered to his new solicitor, upon his undertaking to return them as soon as the immediate purpose of their delivery has been attained. Such is the rule where the solicitor has discharged the client, but where the client has discharged the solicitor, it might have been supposed that the rule was different. It would seem, however, that in the case now before us, this distinction has been disregarded. A solicitor had agreed, in this case, to carry on his client's suit without requiring any funds for the purpose till the hearing. A decree was made, and the client appealed from it. The solicitor declined to act in the appeal without funds, and a fresh solicitor was appointed. A motion was now made that the old solicitor might hand over the papers to the new one without prejudice to his lien; and Vice-Chancellor Kindersley made the order. He admitted that this solicitor had the right, after the original hearing, to refuse to go on without funds; but he denied that he had the right, by withholding the papers, to prevent the course of justice, "although he had a right to his lien, whatever it was." We think that this qualification, "whatever it was," is seasonable. Certainly, if the papers are to be handed over to the new solicitor for all the purposes for which they can be required, the value of the lien of the old solicitor becomes inappreciable. He has done without payment as much business as he agreed to do, and he declines to do more. Probably his only chance of payment is to be found in this lien on the papers in the cause which the present decision has annihilated. The Vice-Chancellor said expressly, "the order to change solicitors was a discharge by the client;" and he then proceeded to make the order which we should have expected him to make if he had held that there had been a discharge by the solicitor.

It must be observed that this decision of Vice-Chancellor Kindersley is, to some extent, at least, supported by the case of *Heslop* v. *Metcalfe*, 3 My. & Cr. 183, to which we referred in our former article on this subject. In that case, the soliciter, after acting for about fifteen months, delivered his bill of costs in the suit, shewing a balance due to him, after giving credit for certain sums advanced by the client. Shortly afterwards, the solicitor wrote a letter requesting payment of a larger balance due on his general bill of costs, and saying that if it were not paid, the client must abide the consequences. In a subsequent letter, he stated that he should proceed no further in the cause unless the request contained in his previous letter were complied with. Under these circumstances, Lord Cottenham considered that the solicitor had retired from the performance of his duty in the cause. After an examination of

the facts proved in the case, his lordship said that they amounted "to a withdrawal from the office of solicitor;" and therefore he held that the rule laid down by Lord Eldon for securing the convenience of the client became applicable. It is, however, by no means certain that Lord Cottenham would have made a similar order in such a case as that now before us. In *Heslop* v. *Metcalfe*, the client had paid money on account, the solicitor demanded payment not only of the balance due to him in the suit, but of a general balance, and there had been no previous stipulation as to the time beyond which the solicitor should not be expected to proceed, unless he were supplied with funds. All these circumstances distinguish *Heslop* v. *Metcalfe* from the case lately before Vice-Chancellor Kindersley; and besides his Honour himself distinguishes the two cases by saying that the latter was a case of discharge by the client, whereas Lord Cottenham treated the former as a case of discharge by the solicitor. We doubt, therefore, whether the Vice-Chancellor's decision is fully justified by authority, and it certainly does not seem altogether easy to reconcile it with principle.

COMMON LAW.

GUARANTEE, CONTRACT OF—PAST AND FUTURE DEBTS.

Westhead v. *Sproson*, Ex., 9 W. R. 695.

It is an essential ingredient in the contract of guarantee that something is to be done by the party to whom it is given. It is true that a guarantee may well be given of a debt already incurred (as was the case in *White* v. *Woodward*, 5 C. B. 810), but then it must be in consideration of a future advance or supply of goods to the debtor. In the present case, the guarantee was in like manner in respect of supplies on credit already made, and hereafter to be made; and the consideration was that the creditor would in future credit the debtor with such goods as he might require, and the creditor might think fit to supply; and on this promise an action, before any additional supply, was made, was brought to recover the value of the advances already made. It was, however, held that no action lay until a fresh advance was made, when both that and the past debt might be recovered from the surety. Until such advance the agreement was void for want of mutuality. For the only engagement on the part of the plaintiff was to supply if he thought fit to do so, which amounted to nothing and formed no valid consideration for the guarantee.

It may be remarked that in the 3rd vol. of Broderip & Bingham's reports (p. 211) a guarantee is mentioned somewhat in the form of that in the present case, being in respect of "the present account of A. B." and of "what she may contract from this date" to a future date. This guarantee was held to be good, although it might be argued (as in the present case) that inasmuch as there are two sides to every contract, there was no certainty of there being, as affairs turned out, any future advances. But it is to be observed that from the report of this case it does not appear whether before action brought, any fresh contract for the supply of goods had in point of fact been entered into. Indeed, the only question there argued, seems to have been whether a consideration sufficiently appeared on the face of the instrument.

STATUTE OF FRAUDS—WHAT MAY BE RECOVERED ON THE COMMON COUNT FOR WORK AND MATERIALS.

Lee v. *Griffin*, Q. B., 9 W. R. 702.

This was a hard case for the plaintiff, who, being a surgeon-dentist, had received an order from a patient for some artificial teeth, which he made in due course, but in the meantime the patient fell ill and died before they could be either fitted or delivered. Now the value of these teeth being more than £10, the case fell under the 17th section of the Statute of Frauds (29 Car. 2, c. 3), which does not allow a contract for *the sale of goods* to that price and upwards to be good unless either the buyer shall accept and actually receive a portion or shall give something in earnest to bind the bargain or in part payment, or unless some memorandum or note in writing of the bargain be made and signed by the party to be signed or his lawfully authorised agent. This provision, it is true, applied originally only to such goods as were actually made at the time of contract, and were then in a state for delivery, which would not meet the case in question, the teeth being at that time still to be manufactured by the plaintiff; but a later statute, known as Lord Tenterden's Act (9 Geo. 4, s. 14), extended the 17th section of 29 Car. 2, c. 3, to cases where the goods were not at the time of the contract of sale actually made, procured, or provided, or fit and ready for delivery. And, as in the present case, as no written agreement had been entered into (though an imperfect correspondence on the subject had passed between the parties), nor any of the alternatives above-mentioned taken place, the only resource of the plaintiff to obtain payment for what he had done on his patient's express retainer, was to charge his executor for the teeth as for work and labour done, and materials provided by him for the testator at his request. But here the Court interfered, and placed a construction on such a count (which is one of the "common counts") which was fatal to the plaintiff's success. They held that under such a count, the value of no article can be recovered which is not entirely subordinate and auxiliary to the work and labour performed therein, and that it by no means followed that it can be recovered on such count because the skill of the plaintiff made the article of value. The case which was chiefly relied upon on behalf of the plaintiff was the recent one of *Clay* v. *Yates* (1 H. & N. 73), in which it was held by the Court of Exchequer that the cost of supplying paper, and printing thereon the manuscript of the defendant, might be sued for as work and labour, and consequently did not come within the provisions of the statutes above referred to. And the Chief Baron intimated his opinion to be that "in the case of a work of art, whether in gold or silver, marble or plaster, where the application of skill and labour is of the highest description, and the material is of no importance as compared with the labour, the price may be recovered as work, labour, and materials." Now, according to this direction, it is certainly difficult to distinguish the position of the plaintiff in the present case; and so the Queen's Bench appears to have thought: for both Mr. Justice Crompton and Mr. Justice Blackburn, in giving their judgment for the defendant, stated that they doubted whether the law was properly laid down in *Clay* v. *Yates;* while the remaining judge present, Mr. Justice Hill, preferred resting his concurrence in the judgment of the court upon a distinct ground not material to the present question, viz., that by the terms of the order given in this particular instance, the teeth were not to be paid for until they were fitted, an operation which, owing to the death (as above-mentioned), never, in fact, took place.

18 & 19 VICT. C. 118, S. 2—BONA FIDE "TRAVELLERS."

Taylor v. *Humphreys*, C. P., 9 W. R. 705.

This case is an express affirmance of a previous decision of the same Court on the proper construction of the Sunday Trading Act (18 & 19 Vict. c. 118) s. 2. This was the case of *Atkinson* v. *Sellers*, of which an account was given in a preceding volume;* and in which the chief point was, the legal definition of a "traveller" within that provision. The Court then, as now, protested against the ambiguity of the term as used by the Legislature; but held that provided the persons supplied with refreshment within prohibited hours were in the course of a journey, they must be held to be travellers; and that it was immaterial, for this purpose, whether they were journeying for pleasure or on business. And in the present case a conviction was quashed on the authority of this reading of the Act, where certain persons had asked for and obtained refreshment during the hours of Divine service, at the end of a walk taken for amusement or exercise, of four or five miles from their place of residence—having, it should be observed, replied in the affirmative to the question of the innkeeper before he admitted them, as to whether they were travellers. And this suggests a difficulty which in these cases must often in the nature of things arise, as to the knowledge on the part of a person charged under the Act, with respect to the real character of the persons whom he entertains. Neither the existing Act, nor the statute on the same subject which it repeals (17 & 18 Vict. c. 79), contains any provision about the onus of proof or the amount of evidence required in these cases. And it is difficult to see the limit which may be safely drawn by the landlord, if the assertion of him who demands refreshment is not enough; and yet if it is to be held sufficient, an appeal to the veracity of a thirsty applicant seems but a slender protection for the object of the Legislature.

* Vide sup. vol. 3, p. 938.

Correspondence.

DEVISE OF REAL ESTATE.

Referring to the question put by J. N. C., in the *Solicitor's Journal* of the 13th instant, it seems clear that S. H. took a vested estate as tenant in common in fee. It is laid down in "Jarman on Wills," 3rd edit., vol. 2, pp. 143, 144, that on a devise or bequest "to A. for life, and after his decease to the children of B., the children (if any) of B., living at the death of the testator, together with those who happen to be born during the life of A., the tenant for life, are entitled," and that in cases falling within this rule, the children (if any) living at the death of the testator take an immediately vested interest in their shares, subject to the diminution of those shares, as the number of objects is augmented by future births, during the life of the tenant for life; and that, consequently, on the death of any of the children, during the life of the tenant for life, their shares (if their interest therein is transmissible) devolve to their respective representatives. That the estate of S. H. was transmissible will appear by reference to page 237 of the volume cited above, where it is stated that "it has long been settled that the words 'equally to be divided' or 'to be divided,' will create a tenancy in common." T. D.

In answer to your correspondent, J. N. C. (*ante*, p. 632), the children of H. each take a vested remainder under the will of S. (see "Jarman's Wills by Sweet," 3rd edit., pp. 289, 290). And by the Wills Act 7 Will. 4 & 1 Vict., c. 26, s. 3, it is declared that it shall be lawful for every person to devise by his will, &c., &c., and that the power thereby given shall extend "to all contingent executory or other future interests in any real or personal estate, &c." C. W. W.

Your correspondent's signed, J. N. C., in the *Journal* of the 13th instant, may, I think, be answered in the affirmative. I beg to refer him to *Sturges* v. *Pearson*, 4 Mad. 411, and see also 6 Mad. 250; and to sect. 3 of the Wills Act, 7 Will. 4, & 1 Vict. c. 26. C. W. W.

EQUITY OF REDEMPTION.—ELEGIT.

An equity of redemption cannot, as I understand the law, be extended under an elegit. It this be so, that writ is a delusion, since few debtors against whom it would be put in force have unencumbered real estates. The law should surely be altered in this respect, now that registered judgments are deprived of their efficacy, and considering that there are many cases—several such have come under my notice lately—where the only source from which the creditor can hope for payment is the real estate of the debtor. Q.

IRISH ANTE-UNION STATUTES.

The object of my former remarks* was merely to direct attention to the mode in which an Irish Ante-Union Statute should be brought to the knowledge of an English Court. I made no comment on any other point in the case. I should think, however, that the evidence of an expert could not be required on the construction of the statute on which the question at Warwick arose, the general principles of law, including those relative to the interpretation of statutes, being notoriously identical in England and Ireland, and there being no specially Irish terms in the enactment in question. As to proof of the statute not having been repealed before the Union, I apprehend there is a presumption of law that any given statute is unrepealed. When the one side had proved the statute, the burden of showing its repeal was thrown on the other side.

It struck me that the course taken in the Warwick case was new; and such an innovation, if it be one, is gravely to be deprecated. F. S. R.

Lincoln's-inn, July 25.

PROBATE COURT DISTRICT REGISTRARS' NEW FEES.

If you would kindly mention in to-morrow's number of your Paper that memorials on this subject from the Liverpool, Hull, Birmingham, Yorkshire, Lincolnshire, and Gloucestershire Law Societies have been already presented to the Treasury, it might incite other law societies and solicitors in towns not having a law society to follow the good example.

Metropolitan and Provincial Law Association, July 26.

PHILIP RICKMAN, Secretary.

* *Ante* p. 632.

Foreign Tribunals and Jurisprudence.

SUPREME COURT OF BOMBAY.—CROWN SIDE.

(Before the FULL COURT.)

June 6.—*The Queen* v. *Jamsetjee Burjorjee*.—Mr. *Anstey* moved on behalf of the prisoner, Jamsetjee Burjorjee, for a rule *nisi* to quash the coroner's inquisition on the bodies of Byroo Sultan and four others. The inquisition was held on the 30th and 31st of last month before H. Cleveland, Esq., coroner of Bombay, on view of the bodies of Byroo Sultan and four others, who were killed by the falling on them of a portion of the earth which they had been digging at the Maneckjee Petty spinning and weaving factory; and the jury having returned a verdict of manslaughter against the prisoner, who was contractor of the work, as having feloniously and unlawfully caused the death of the deceased persons. The grounds of the motion were, firstly, that the inquisition was not perfected when the proceedings were returned to this Court by the coroner, and that only the proceedings and not the verdict of the jury had been returned; secondly, that the proceedings of the inquisition were not written on parchment, as was required by the statute law in cases of manslaughter and murder; and thirdly, that on the face of the evidence, no criminal offence or unlawful homicide had been established against the prisoner. Mr. Anstey read the depositions recorded before the coroner of two of the fellow labourers of the deceased to show that they were employed by the Muccadum, Sooryaba, whom they looked upon as their master, that they obeyed Sooryaba, who followed the instructions received from the prisoner, that the prisoner had called at the place the day before the accident had occurred, and told them to dig in a slope, and that he was present at the time of the accident. Having referred to the evidence of the engineer, Mr. Rowlands, which was scientific, given after examination of the scene of the accident, and that of the prisoner, Mr. Anstey remarked that on the body of evidence the Coroner had written a memorandum summing up the case to a jury consisting of Hindoos, who were of course ignorant of the law of England, and said he thought it necessary to refer to the affidavit of Mr. Prentis, who was present at the inquest on behalf of the prisoner, and had taken notes of the proceedings. Mr. Prentis gives the following as the summing up of the Coroner.—"These five persons have been killed and you have to inquire the cause of their deaths. There is no doubt that they were killed by the earth falling on them. You must find out the cause. It is not sufficient to say that it was the will of God that this earth should fall and kill these persons, the ground may have been dug in such a way that it might have stood all the night and part of the day and had then fallen down. If that was caused by any person, that person was responsible. Mr. Rowlands says that it had been worked in a most dangerous and improper manner, he says that a little has been dug away from the bottom at a time and then the superincumbent earth has been allowed to fall. The contractor who has agreed to do it could not have done it at a price had it been done properly. It was his interest to get the earth away as quickly as possible and as cheaply. You are bound not to spare any one, but you must say what was the cause of the accident. Mr. Rowlands says that there has been no precaution to prevent accidents. He considers that the work has been carried on without the slightest regard for the limbs or lives of the persons engaged in it. Mr. Rowlands further says that it ought to have been by three lifts at a time. Any person with common sense would see that the way in which the excavation was carried on was dangerous in the extreme. Soorya declares that he did the work as Jamsetjee directed him to do it. If you believe that Soorya was working under the direction of Jamsetjee Burjorjee I then consider that Jamsetjee Burjorjee is responsible for the deaths of these five men. If Soorya was merely the servant of Jamsetjee he would not be responsible unless it could be shewn that he was aware of the danger or bore malice." Mr. Prentis then goes on to say that the above note represents accurately, to his belief, the substance of the coroner's summing up, save that the coroner referred to a statement made to him by Jamsetjee before Mr. Prentis's arrival at the inquest, and also to Jamsetjee's deposition taken at the inquest, and told the jury that he (Jamsetjee) had not denied the case, or words to that effect. The jury (who were all Hindoos) were then left alone to deliberate on their verdict, and, after some minutes, they said that Jamsetjee had, in their opinion, been guilty of negligence and was to blame. The coroner then asked them whether they intended that as a verdict of manslaughter, upon which

they said they did. The coroner signified his approval of such verdict, made a memorandum of it in writing, and issued his warrant for the commitment of Jamsetjee for manslaughter. He was accordingly apprehended and lodged in the common gaol of Bombay on the 31st May. On the 3rd June, Mr. Prentis obtained from his lordship the Chief Justice an order for a writ of *habeas corpus* to have the body of Jamsetjee before his lordship at his house on Malabar Hill on the following day at eleven o'clock in the forenoon. The order was obtained with the object of applying, on the return of the writ, that Jamsetjee might be admitted to bail on the commitment for manslaughter. In consequence of a letter addressed to the coroner by Messrs. Acland and Prentis, that officer sent to the Chief Justice the depositions recorded by him, but they were unaccompanied by any writing or memorandum of a verdict or any inquisition. No one attended before his lordship on behalf of the prosecution, and Jamsetjee was admitted to bail and discharged from custody on the afternoon of the 4th instant. On the 3rd instant Mr. Anstey appeared before Mr. Brown, magistrate, on behalf of the prisoner, but no one attended to conduct the prosecution or to watch it, nor had the coroner's depositions been then furnished to the magistrate. On Mr. Anstey asking the magistrate to dismiss the charge he said he felt a difficulty in doing so, as the case had already been investigated by the coroner, but that he would consider whether he would or would not dismiss it. Mr. Prentis believed that, but for the verdict taken in the inquest, the magistrate would have dismissed the case. At an adjourned investigation the coroner's depositions were sent to the magistrate, but without any entry of a verdict or any memorandum. From these circumstances Mr. Prentis believed that it was not the intention of Government or of any person to proceed against the defendant on the charge of manslaughter.

Mr. *Anstey* submitted that on the face of all the facts adduced in the evidence, and according to the authorities he would cite to the Court, no offence whatever appeared to have been committed by the prisoner. In the case of *Reg.* v. *Cullee* (Ad. & Ell.) the Court set aside the inquisition on an apparent defect —viz., the want of any evidence or facts showing the crime which was manslaughter, and the reason given was two-fold—that it was bad in point of law and that the jury was not justified in coming to such a conclusion.

Mr. Justice ARNOULD.—What is your ground, Mr. Anstey? Is it that there is no personal misconduct on the part of the prisoner?

Mr. *Anstey*.—I am coming to that. I find no instance of conviction of manslaughter on evidence that the prisoner was accessory before the fact; and for this reason, because it is a felony committed without deliberation. In our criminal jurisprudence, in the crime of manslaughter though there may be accessories *after* the fact, there can be no accessories *before* the fact. It is of the essence of manslaughter that the act is sudden and there is no previous knowledge or intention. In strict conformity with this opinion there are two recent decisions of the Court of Criminal Cases Reserved and of the Queen's Bench. *Reg.* v. *William Bennett*, 7 WEEKLY REPORTER, is a very strong case, as it contained an element which does not exist here. In defiance of the statute law Bennett openly carried on the business of supplying fire works, and had a factory for the purpose, as also a quantity of combustible materials in his own house. Whilst the prisoner was out of the house an explosion took place of the combustible substances worked by his servants, the fire spread among other fireworks, a rocket shot across the street, set fire to a neighbouring house and caused the death of a person. Bennett was convicted of manslaughter, but the conviction was not justified by the facts of the case and was afterwards quashed. It was not shewn to be his misdemeanour, but that of his servants. In the case of *Reg.* v. *Pocock* death had occurred directly from the bad state of the road, but still the conviction of the prisoner of the crime of manslaughter was subsequently quashed.

Chief Justice SAUSSE.—There is a case, I remember, in the 5 WEEKLY REPORTER, in which death was caused by the omission of the prisoner to put the cover to a shaft in a coal pit.

Mr. *Anstey*.—In that case (*Reg.* v. *David Hughes*, 5 WEEKLY REPORTER, 753) the prisoner, who was captain of a gang working at a coal-pit, opened the mouth and went away without replacing it, as he ought to have done; owing to his neglect to put the stage on the mouth of the shaft, a truck fell into the pit and killed a man, and it was held by the Court that his omission had directly caused the death.

Chief Justice SAUSSE.—This last case shows that a party may be held liable for manslaughter, even if he was not present at the time of the accident, and that presence is not necessary to an act of homicide.

Mr. *Anstey*.—I don't say that a man cannot be indicted if he is directly concerned in the act, although at the time he may be absent. In that case the prisoner's omission or neglect to cover the shaft was considered the proximate cause of death, and accordingly he was held liable for manslaughter.

Mr. Justice ARNOULD.—The question is whether there were no directions given by the Parsee.

Mr. *Anstey*.—There is no evidence to show that the directions given the night before the accident were such as to have caused the accident. The prisoner had given orders to the men to dig in a slope, and if they had done so no accident could have occurred, for according to the evidence of Mr. Rowlands, the earth would not have fallen down if dug in a slope. I say therefore that the principle of law is maintained by all recent decisions, and there is not a single case where for accidents of this sort the doctrine of *respondent superior* is applied to, except for holding parties liable for *homicide per infortunum*.

Mr. *Westropp*, *Amicus Curiæ*.—I know of a case, *Reg.* v. *Lowe*, which will assist your Lordships. In that case an engineer who was employed to manage an engine in lifting up men, left the engine in charge of a boy who said that he was incompetent to manage it, in coming up a man was killed, and the engineer was held liable for manslaughter.

Chief Justice SAUSSE.—The evidence here is that the prisoner directed the mode in which the excavation was to be made, and Soorya says he dug exactly as the prisoner showed him. Having intervened and his directions specifically carried out, the question is, whether he is to be held responsible for the consequences.

Mr. *Anstey*.—The workmen were not the servants of the prisoner; he was a builder and not an excavator, he contracted for the work with Soorya, who is an excavator, and paid him at a certain rate for every hundred cubic feet. The men besides obeyed the orders of Soorya, whom they regarded as their master and not the prisoner. Prisoner is too remote a cause of the accident, and too remote for damages.

Chief Justice SAUSSE.—Suppose the prisoner was present when those directions were given and if the accident occurred, would he be liable?

Mr. *Anstey*.—If he was on the spot and if he did not prevent the accident, and if that accident could not be traced to any other cause, he would be liable. The coroner directed the jury that somebody should be punished, that Soorya could not be, and the jury being thus placed in an awkward position found the prisoner guilty. The evidence of Mr. Rowlands is clear, he gives it as his opinion that the accident could not have taken place if the men had dug in the manner in which they say they had been directed by the prisoner to do, namely, in a sloping direction. There was no evidence that the digging was the proximate cause of the accident. This is a monstrous inquisition, for the prisoner is too remote a cause to be connected with the accident, which did not take place in consequence of any of his orders. If there had been a verdict of murder I could not have asked for quashing the inquisition, for it is held that manslaughter is *prima facie* evidence for murder. The evidence for both is the same, with this exception, that in manslaughter not only the fact of the homicide but all circumstances relating to it must be shewn, and that *some* evidence is not sufficient. A greivous injustice had been done the prisoner; a man of his high position was carried to jail and confined there from the 31st of May to the 4th June. His attorney says the mere fact of the jury's verdict has prevented the magistrate from dismissing the charge. He is anxious to get rid of the stigma cast upon him by this inquisition, and to take measures for redress, and unless he gets rid of the inquisition he cannot take those measures. The coroner has, I consider, exceeded his jurisdiction, and if your Lordships grant further time to the coroner to shew his authority you will call upon him to shew cause why the inquisition should not be quashed.

Cur. ad. vult.

June 11.—The CHIEF JUSTICE now delivered the judgment of the Court as follows:—Here an objection has been made to the inquest on the ground—which we regret very much to say is supported by English and Indian Acts, and by the case of *The Queen* v. *Birley*, 7 D. & L.,—that the inquisition was on paper, and not on parchment. We feel ourselves coerced to quash the inquisition. It is very much to be regretted that the Legislature at Calcutta should not have paid more regard to the circumstances and practice existing here at least, if not also in Calcutta. Acts ought not to be passed upon these subjects

without more consideration. As to the merits of the case, if we could have gone into them, our impression would be against quashing the inquisition, for the legal question would be, was the prisoner present? He was not personally present, but was he constructively present? In p. 4 of Archbold's Criminal Pleading, the principle of constructive presence is very clearly laid down. In *The Queen* v. *Pocock*, 17 Q. B., Lord Campbell said that he himself tried a person who entrusted the management of a shaft to one who was incompetent, and declared himself incompetent, and he then absented himself. It was held that the absent person was responsible for the accident, and he was found guilty of manslaughter, and severely punished. In *Penton's case*, Levinz. Cr. C. 179, persons who threw down a beam and broke a scaffolding, were held guilty of manslaughter, upon the death of a person who afterwards fell down, when it does not appear that those persons were present. In the case of ——— it does not distinctly appear that the wine merchant was present when the cask fell down, for which he was found guilty of manslaughter. The cases of *The Queen* v. ———, and *The Queen* v. ———, were cases of manslaughter against captains of ships. Their liability was put upon their giving commands. If the death happened through their commands, they would be held liable. If, therefore, the objection as to the inquisition not being on parchment did not exist, we should have been bound to hold the finding as *prima facie* sufficient, and leave the party to his defence.

Inquisition quashed.

STRASBOURG.—A curious case recently came before the Tribunal of Commerce of Strasbourg. In March last, MM. Gillet, Hoffer & Co., wholesale grocers in that city, inserted in the local journals advertisements declaring that they had received from a sugar refinery a vast quantity of that article on such terms that they could sell it at a reduction of 20f. per 100 kilogrammes. Several grocers of Strasbourg brought an action against them to obtain damages, on the ground that such an advertisement was what the law calls "unfair competition," inasmuch as it was calculated to entice away their customers, and was, besides, false, the defendants not being in reality able to sell sugar at such a diminution in price. The Tribunal, however, after hearing long technical arguments, decided that the advertisement did not constitute an act of unfair competition, and that it was for the public, not the plaintiffs, to complain if the promise of a reduction in price was not kept. It therefore dismissed the action with costs.

Review.

A Dictionary of Dates relating to all Ages and Nations for Universal Reference, comprehending Remarkable Occurrences, Ancient and Modern; the Foundation, Laws, and Governments of Countries; their Progress in Civilization, Industry, Literature, Arts, and Science; their Achievements in Arms; and their Civil, Military, and Religious Institutions; and particularly of the British Empire. By JOSEPH HAYDN. Tenth edition. Revised and greatly enlarged. By BENJAMIN VINCENT, Assistant-Secretary and Keeper of the Library of the Royal Institution of Great Britain. Moxon & Co. 1861.

This book was written long before a host of small authors had undertaken to inform the British public of that numerous class of things which are not, but ought to be, generally known; and although Mr. Haydn never condescended to avail himself of any of those clap-trap devices common to these gentry, it has already reached its tenth edition, which is the best testimony of its value. The original idea of the work was as happy as it was novel; and, unquestionably, its execution was attended with very great difficulty, and demanded a vast amount of patient drudgery. So many facts of importance have occurred since the history of man commenced to be written, that any one attempting to make a dictionary of their dates could hardly fail to feel great embarrassment from the abundance of the materials which lay around him. Mr. Haydn's notion was to confine the category in the first place to facts of universal interest, such as those relating to the foundation, laws, and governments of countries—their progress and civilisation, industry, literature, arts, and science—their achievements in arms—and their civil, military, and religious institutions—having especial regard to whatever related to the British empire, or was likely to be interesting or useful to Englishmen. All lawyers are familiar with the importance of dates. One of the first things to be acquired by every lawyer is the habit of attending closely to the chronology of such events as are comprised in any case under his consideration. This is equally so, whether he is reading an abstract of title, the proceedings in a chancery suit, or the depositions in a criminal charge. Attention to the order of time is not less necessary to the student who attempts to throw upon any doctrine of law the light of its history. Nothing helps one more towards the discovery of the grounds and reasons and limitations of legal principles, than the habit of reading the decisions in the order of time, and not, as is so frequently the case, as if all the judgments had been delivered contemporaneously. If these remarks are of any force, such a book as Haydn's Dictionary of Dates must be of great value to lawyers, and especially to beginners, from the tendency which frequent reference to it is calculated to produce; and its utility is especially obvious where persons labour under that peculiar defect of memory which makes it difficult to remember the times of occurrences. The habit of mind thus acquired is, however, but an indirect benefit derivable from the frequent perusal of such a work as this, and we only point to it as a consideration which is not to be forgotten in any criticism upon the book now before us. Its immediate and direct usefulness will, of course, be its chief recommendation to the great majority of persons; and upon this head we may allude to a few instances for the purpose of showing how far facts interesting to lawyers are touched upon in this dictionary. In the first place, then, it may be observed that it contains chronological lists of the judges of all the superior courts in England and Ireland, and the dates of a great number of interesting facts connected with their foundation and jurisdiction. We also have the dates of the enactment of various laws which are of more than usual interest and importance, and also of the decisions of famous cases, such, for instance, as the Thellusson will case. Indeed, there is a surprising amount of valuable information comprised in many of the short statements which are to be found under various legal heads. Thus under the head of Perjury, in a dozen lines, we are told something about this crime and its punishment amongst the Greeks and Romans, and under the canons of the primitive church. Then follow references to persons infamous for their perjury, amongst which we find the case of Alice Gray, who was convicted in 1856 of numerous perjuries, and then we are reminded of the Abolition of Oaths Act, 5 & 6 Will. 4, c. 60, s. 61, by which persons making a false declaration are deemed to be guilty of a misdemeanour. So under the head of penal laws affecting Roman Catholics, there is contained in less than a page of small print a very compendious account under a number of different heads of all the penal laws which were repealed by the Catholic Emancipation Act of 1829. There are also a number of heads which are indirectly of peculiar interest and utility to lawyers. Thus under the head of Parliament we have amongst other valuable information a statement of "the number and duration of Parliaments from the 27 Ed. I., 1299, to the 22nd of Vict., 1859." We refer to these special instances in different classes of topics merely by way of illustration, as we cannot pretend to enumerate all the topics in this book which are especially interesting to lawyers. We can only say that as a book of general reference for dates, it will be found extremely useful in lawyers' offices, and for the reasons we have mentioned, it should be prized by all law students.

STATUTE LAW CONSOLIDATION.

We give the following extracts from Mr. Coode's letter to Lord Palmerston on the Criminal Law Consolidation Bills now before Parliament.

What is desired and expected under the name of consolidation of the statute law is assuredly this,—that so much of the statute law as is now found dispersed through the statute-book, should be collected together and arranged in such a way that the parts that have most connexion in meaning and effect should be most closely brought together, so that they shall throw mutual light each one on the other; that every subject, so far as the statute law affects it, should be seen in its entirety in one Act, and not as now, disjointed and dispersed in many Acts.

Thus every right—say for an instance—the right to the use of a man's body, is most clearly connected with the obligations imposed on other men to respect his liberty, and alone explains and justifies these obligations; and the clear understanding of

both these, again, is indispensable for the understanding of any declaration or definition of acts diminishing his use of his body, which are wrongs, offences, or crimes, only inasmuch as they contravene those rights and obligations, and are not possibly to be conceived as wrongs, offences, or crimes, in any other way; and again, the precedent understanding of these rights, these obligations, these wrongs, is equally and absolutely indispensable for the understanding and appreciation of any appliances of the law for the protection of the right and enforcement of the obligation, whether ministerial, or preventive, or compulsive, or restitutive, or remedial, or compensatory, or penal; and of any choice of ministers, or tribunals; and of any course of procedure provided for protecting that same right or enforcing the corresponding obligations. This connexion is not merely verbal or logical, is not merely an association by resemblance; it is an actual, essential, intimate, inevitable, and indissoluble connexion, in which each part is necessary to the creation, co-existence, and intelligibility of every other. The collection from out of the chaos of the statute-book of all the provisions that affected such a right, in the order of the appropriate and subservient obligations, the prohibited wrongs, the legal protections, ministerial, civil, equitable, or penal, would be as to that particular right a perfect, self-consistent, and self-explaining consolidation of the statute law; intelligible, so far as the nature of the subject admitted of it, to every man, and affording an infallible clue to every man by which to find the statutory matter he might be in search of. The certain light, the sure test of the policy, the ready means of appreciating the usefulness of all parts of the law, which this method would afford, is what all men instinctively desire and expect who hear of a "consolidation" of the law, and this is what every good treatise on the law performs. Done by the legislature for the statute law, this work would be, so far as it went, a true consolidation—a placing together of all those parts of any subject, which make up the whole of that particular subject.

But no consolidation, in any sense of the term, is possible on the plan of these Bills—which is that of picking out the similar or identical parts from all different subjects, and stringing all those similar parts together in one Bill. Two penalties may be enacted in absolutely identical terms, but they have no connection of any kind with each other, either legal, moral, or logical, unless they protect the very same right. The penalty for assaulting a clergyman, and that for the procuration of a young woman, may, as in these Bills, be enacted in the very same words, but can have no possible connection; but the first has its proper place in immediate connection with all the other provisions of the law for the establishment and protection of religion and its ministers—the other, with all those provisions which protect the chastity and nubility of women. To pick these penalties out of their proper place is to mutilate, to destroy the integrity of the whole subjects of which they are severally the constituent legal parts. The collection of identical constituent parts must always necessarily be the destruction of the whole from which they are taken. For instance, taken and viewed apart, the spring, the balance, the dial, the hands of a watch, would be things of little significance; but seen in their mutual connection they are admirable and intelligible. A child could take off, say, the hands of hundreds of watches and could collect them into a box, but he would not by this act pretend to give these hands any connection or relationship to each other—he would not pretend to construct watches, he would be a collector of similar parts, but the destroyer of the wholes of the watches. Modellers take casts, say of the right hands of an Apollo, a Venus, a Hercules, a Gladiator, and arrange them in one place for sale, but they do not pretend that the operation of selecting and arranging similar parts is one of connecting of those parts; or that those parts so collected are so properly in place, so intelligible, or so admirable, as they were in their connection with the whole of the several figures from which they are taken. Few things are more like each other than eyes to eyes, and the eyes of one animal to those of another; but this likeness constitutes no connection of one pair of eyes with another eye or pair of eyes. Their connection is in every case with the brain behind them, and with the whole organic system of the whole animal whom they serve to warn of the proximity of objects of desire and aversion. In this connection these natural uses are understood and appreciated. But the tom-tit which plucks out the eyes of a whole aviary is unconscious of any pretensions to science or system in this selection of like parts, but obeys an instinct of undisguised destructiveness which the preparers of these Bills obey even more blindly, if they really believe that they were occupied in any constructive operation. A butcher severs shoulders of mutton as like each other as possible, and hangs them together on one line, but he does not call his arrangement a "consolidation;" he admits that he has permanently destroyed the connection which nature had made between those parts and the organic wholes from which he separated them. An Indian's collection of scalps, an African king's mound of heads, an Oriental despot's tale of right ears, are collections of similar parts, never yet commended for constructive merits, or as "consolidations." But this is the strange pretence of these Bills, that the like dilaniation of whole organic subjects in law, by cutting out their penal portions and stringing them together in the form of Bills, is something logical, or systematic, or constructive, an improvement in form or order, to be accepted as "Consolidation."

A few moments' consideration will assuredly beget the conviction that there is no consolidation possible by the aggregation of similar parts; but that the collection of similar parts is necessarily destruction and disintegration of the subjects from which those parts are taken. If so, no consolidation is possible of the so-called penal law or criminal law. Twenty-eight years of effort of commissions, of committees, of both Houses of Parliament, and sixty thousand pounds of public money expended, have been made fruitless through the folly of attempting a consolidation which must be necessarily a dissolidation. It is to be hoped that the evil will end here, in a mere loss of time and money, and a mere disappointment of hopes absurdly entertained, and that what is thus far no more than an idle folly, will not be converted into a permanent active mischief by carrying these Bills into law.

As Bills these things are only costly and harmless follies; but as laws they must work incalculable evil. These Bills, if passed, will be an absolute hindrance to the consolidation of all branches of the law.

They all consist exclusively of clauses, wholly unconnected the one with the other, and only brought together by the single fact that they are, every one of them, connected with a penalty. Every one of them is the penal fragment torn from its organic connection with the rights and duties, and with the other vindications with which it is legally, systematically, and logically connected. Yet although this incident of a penalty being enacted alone brings these heterogeneous provisions together—it is the almost incredible fact that the one incident which is apparent in every clause and the assumed ground for uniting them together, is itself as a whole omitted. All the provisions of the law, regulating penalties in their imposition and enforcement, are wholly left out from this series of Bills—a series of six Bills pretending to consolidate the penal law, with its one sole pervading element, penalty, in all its specific and general applications, omitted.

But if one mode of vindicating rights and enforcing duties may be thus taken out of the body of the law and made the pretence of bringing together provisions relating to every specific right and duty, there will remain no other consistent way to consolidate the fragments which will still remain, but to take all these very same rights and duties once again in connection with every other mode of vindicating them. We must have them all brought together again with the preventive vindications, again with the compulsive vindications, again with the reparatory vindications, again with the compensatory vindications, and to be consistent with this specimen of "Consolidation," we must in the Bills for the prevention of wrongs leave out the one characteristic of all the clauses, the general provisions relating to prevention, and in every other series in the same way, the one incident which alone is to act as a pretext for stringing them together.

This is, however, an assumption that the process of "Consolidation" is to be carried out consistently with this specimen, and it is certainly quite possible that it may not be carried out consistently. But this also is still more certain, that if these Bills become law, they will have mutilated and reduced to a fragment the body of law which remains relating to every subject from which its penal provisions have been dislocated into these Bills. Every subject touched by these Bills is reduced to a fragment of the subject, maimed or truncated of its penal element. Sir Fitzroy Kelly, speaking as one of the commission who prepared these Bills, assured the House of Commons that they had prepared 83 (?) other consolidating Bills. Now it is certain that every one of these other Bills relating to any matter enforced in any respect by any penalty, must have been either maimed or lopped of its penal element, and so have been only a fragment of a subject, or it must have contained these penal provisions over again—a strange operation of "Consolidation." It might, if this could be doubted, be worth your lordship's while to examine some of these other "Con-

solidations," when their maimed and dismembered appearance would assuredly show the injury inflicted on the whole of them by the dislocation of their penal members into these Bills.

But this effect is more easily to be seen in the operation these Bills have on various Acts recently passed at the instance of yourself and your present colleagues in the Government, who will be well able to judge of the usefulness of the operation. In the seventh Bill of the series, the "Criminal Statutes Repeal," this effect can be seen at a glance. Thus the 16 & 17 Vict. c. 23, contains forty-two perfectly well-connected sections for redeeming and commuting South Sea and other Annuities, for creating new annuities, and issuing Exchequer Bonds, with all necesary incidental provisions for giving course, value and trustworthiness to these instruments,—amongst others, one penal clause, the 41st, making the forgery of them a felony, quite in its proper place and connection, where its use and effect can be most easily seen and judged of. But these Bills take out this 41st section, placing it in a Bill with all other heterogeneous forgeries, and leaving the original Act a mutilated fragment of forty-one clauses. The 16 & 17 Vict. c. 99, is an Act to substitute other punishments in lieu of transportation. It consists of sixteen clauses, all of which relate exclusively to penal matters, and would seem to have been proper to include wholly in a series of Bills exclusively penal. But these Bills only take out and repeal the 12th section, leaving the remainder of the Act a lopped fragment of fifteen clauses. The Act 16 & 17 Vict. c. 132, extending the provisions of cap. 23, is maimed in the like manner of two well-connected sections, quite in their natural place—being left a fragment of nine sections. The 17 & 18 Vict. c. 33, places public statues in the metropolis under the control of the Commissioners of Works, and section six makes the damaging of such statues a misdemeanor. This section is taken away from its well-connected place, and the Act is left a fragment of six remaining sections.

JUDICIAL STATISTICS, 1860.

We are indebted to Mr. W. B. Roberts, solicitor, of Usk, for the following tabular statement, which has recently been compiled by him, for the most part, out of the last official returns on Civil and Criminal Statistics.

Total number of prisoners for debt and under civil process (including 639 women)	11,707
County court prisoners	6,955
Writs of arrest issued by plaintiffs in the Superior Courts	8,679
Imprisoned under writs of the Superior Courts	4,752
Of these last, there presented petitions of insolvency	2,820

The business of the Superior Courts is shown as follows:—

	Queen's Bench.	Common Pleas.	Exchequer.	Total.
Writs of summons	30,778	25,370	41,420	97,568
Appearances	8,423	7,350	9,809	25,582
Entered for trial	743	609	717	2,069
——and defended	344	331	318	993
Rules *nisi* granted	103	75	96	274
——absolute granted	65	22	76	163
—— discharged	36	28	102	166
Executions on goods	5,205	3,657	7,606	16,468
Writs of arrest	2,832	2,153	3,694	8,679
Total executions	8,261	5,942	11,572	25,775

Total amount of money for which verdicts were given in the Courts	£142,412
Fees received by officers of the Courts	£64,612
Causes entered for trial on the circuits	1,207
" tried on the circuits	965
" " " and verdicts for plaintiffs	621
" " " for defendants	128
Appeals from the Court in Banco	66
Notices and writs of error	27

	Causes tried for £50 and above £20	For £20 and under	Total tried.
On circuit	163	168	1,056
Queen's Bench	74	69	402
Common Pleas	86	61	378
Exchequer	89	45	393
	412	343	2,229

The number of writs of summons in 1859, was 86,277

The Court of Chancery return shows:—

Causes, &c., for hearing at the commencement of 1850-60	442
Set down during the year	2,269
Heard during the year	2,001
Remanet at the end of the year	485

There were only 415 witnesses examined in the Examiner's office. The fees paid in Examiner's office were £245.

Bills and informations filed in the year were	2,209
Claims and special cases	48
Administration summonses filed (p. 157)	412
Other summonses	362
Total of the above	3,031
The fees collected by the Clerk of the Records were	£25,107
The total amount of the taxed bills of costs was	£785,262
And the fees paid in the taxing office were	£23,873

As many as 7,065 bills were taxed.

In the Accountant's office the total number of accounts are 22,757, and the fees paid in the office were £684. The receipts in accounts passed, in lunacy of committees and receivers, amounted to £331,594, and disbursements and allowances to £287,497. Certificates of payment of money and transfer of stock, &c., in court were for £169,333.

The amount of cash, securities, and other effects paid and transferred into the office of the Accountant-General in Chancery, in the year ending October, 1860, amounted to £14,707,912; and the amount of cash and securities paid and transferred out of court to £14,487,632. The total number of cheques signed was 40,046.

The number of accounts passed (others than receivers' accounts) was 1,138; the receipts therein, £6,705,593, and the disbursements and allowances £6,212,661.

The number of receivers' accounts was 476; the receipts therein, £1,035,106; and the disbursements and allowances therein, £858,701.

The sum of £1,598,157 was realised on the sale of estates, under the orders of the Court.

In the Probate Court the total number of probates granted was 8,542, and of letters of administration 5,473. The fees are estimated at £1,868. The total amount of taxed costs was £15,557.

In the District Probate Courts the number of probates was 14,005, and of letters of administration 6,160. The total amount of fees received in the forty probate districts was £56,007, and amount of duty for stamps £480,256.

The number of persons declared bankrupts in the year was 1,430, of these 1,028 passed their last examination; the total amount of their debts, on their balance sheets, was £4,478,037, of which £1,249,962 was realised by the Court. The solicitors, assignees, brokers, &c., charges amounted to £316,347, or £33 11*s.* 2*d.* per cent. The average of the dividend in the Manchester Bankrupt Court was £47 7*s.* 5*d.*, and at Bristol £12 1*s.* 11*d.*

In the year 1860, 2,820 petitions of insolvency were filed by imprisoned debtors, of which 820 were within the exclusive jurisdiction of the Court of London. The dividends on the estates averaged £5 11*s.* per cent. The number of petitions for protection filed in 1860 was 3,081, and of these 1,035 were in the London jurisdiction. The number of such petitions in 1859 was 2,820. The amount of scheduled debts in the Insolvent Court cases was £365,766, and in County Court cases £169,845. Under the Protection Acts the debts in the London district were £51,737, and in the County Court districts £176,116.

The business of the County Courts in 1859 and 1860 is thus shown:—

	1859.	1860.
Number of plaints entered	714,562	782,384
Sued for	£1,754,971	£1,882,047
Judgments entered for	£851,732	£902,739
Costs exclusive of fees	£37,628	£38,302
Fees	£215,623	£226,738
Fees (1855) before reduction	£228,720	
Judgments for plaintiffs	285,984	296,719
" for defendants	9,089	9,175
Juries	988	894
Nonsuits	8,861	8,867
Writs of certiorari	135	126

There were 8,911 plaints entered for sums above £20, and judgments entered in 3,655 of such cases.

The number of judgment summonses issued was 112,313; heard, 50,838; warrants of committal issued, 22,399; and actual imprisonments, 6,955.

The warrants issued in 1858 were, 30,756; and of committals, 10,748.

The number of executions against the goods in 1860 was 109,366; and of actual sales, 3,973.

There were 17 appeals to the Superior Courts; charitable trust orders, 133; protection orders to wives registered, 611.

	Plaints.	Sued for	fees above £50	Causes above £50
Bristol Tolzey Court . .	448	£12,844	£246	11
Liverpool Passage Court .	3,340	56,667	1,723	245
London Sheriffs' Court . .	9,970	42,911	4,265	58*
Manchester Record Court	3,881	51,050	1,705	247*
Derby Borough Court . .	103	1,667	1,116	8*
Salford Court of Record. .	2,218	26,307	958	164*

*Above £20 and under £50.

The fees of the Derby Borough Court are represented to be not far short of the amount of the debts sued for. As it has survived nearly all similar courts it is perhaps, at Derby, a popular court, and is apparently well sustained.

On circuit 24, there were 17,418 plaints, and 255 above £20. The total amount of money sued for was £48,285. Protection cases, 57.

On circuit 30 there were 20,430 plaints entered and £49,481 sued for. The number of causes above £20 was 289. Protection cases, 47.

There were nine orders for the protection of wives registered on circuit 24, and four orders registered on circuit 30.

Public Companies.

BILLS IN PARLIAMENT

FOR THE FORMATION OF NEW LINES OF RAILWAY IN ENGLAND AND WALES.

The following Bills have been read a third time and passed in the House of Lords:—

BRECON AND MERTHYR TYDVIL JUNCTION.
COLNE VALLEY AND HALSTEAD.
STOURBRIDGE (Extension to Smethwick).
SWANSEA AND NEATH.

The following Bill has passed through committee in the House of Lords:—

PETERSFIELD EXTENSION.

REPORTS AND MEETINGS.

COLCHESTER, STOUR VALLEY, AND SUDBURY RAILWAY.

The directors of this company recommend that a dividend of £1 12*s.* 6*d.* per cent. per annum for the last half-year be declared at the ensuing half-yearly meeting.

ELECTRIC AND INTERNATIONAL TELEGRAPH COMPANY.

At the next half-yearly meeting of this company, to be held on the 1st of August, a dividend of 3½ per cent. for the last half-year will be recommended.

LONDON, BRIGHTON, AND SOUTH COAST RAILWAY.

The directors of this company, by their report recently issued, recommend the payment of a dividend of 2½ per cent. for the past half-year, leaving a balance of £1,156 to be carried forward.

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY.

At the half-yearly general meeting of this company, held on the 24th inst., after the declaration of the various guaranteed dividends, a dividend at the rate of 15*s.* per cent. per annum was declared on the original stock.

TESTIMONIAL TO MR. FREDERICK WEST, SOLICITOR.—At the 21st anniversary dinner of the Stationers and Paper Makers Provident Society, held at the Albion Tavern on the 17th inst., a handsome testimonial was presented to Mr. Frederick West, of No. 3, Charlotte-row, Mansion House, Solicitor, the honorary secretary of the society. In the course of the evening Mr. George Chater (the treasurer of the society), addressing Mr. West, said he felt a pleasure in presenting, in the name of their friends, a small token of their esteem of his private worth and valuable aid during the period he had fulfilled the duties of hon. secretary. He could bear witness to his kindness of manners, and untiring zeal in the cause. He trusted the present would be accepted only as a sincere token of their esteem. The testimonial consisted of a handsome silver centre-piece, the design of which was as follows:—A tripod panelled vase enriched with vine leaves and grapes, supporting three frosted figures representing "Wisdom," "Liberality," and "Religion." The stem of twisted vine, with canopy of vine and grapes overhanging the figures, surmounted by a trellis-basket holding a cut-glass bowl. One side of the vase contained the arms of Mr. West, another side the arms of the Stationers' Company, while a third bore the following inscription:—"Presented with two epergnes, on the 17th July, 1861, to Frederick West, Esq., by several friends, as a token of their high esteem for his private worth, and to mark their sense of his urbanity and kindness, as well as the untiring zeal and ability with which he has discharged the duties of Honorary Secretary for a period of ten years to the Stationers and Paper Manufacturers' Provident Society.—John Dickenson, Esq., F.R.S., President; George Chater, Esq., Treasurer." Mr. West returned thanks in a feeling speech. The two silver epergnes corresponded with the centre-piece, the whole forming an extremely handsome testimonial.

At a meeting of the town council of Canterbury, held on the 24th instant, Mr. Herbert Tritton Sankey, of this city, solicitor, was unanimously elected clerk of the peace for the city and borough, in the room of Mr. John Nutt, who had resigned.

Marriage and Deaths.

MARRIAGE.

ADAM—BELL—On July 23, at Edinburgh, James Adam, Esq., Advocate, to Catharine Beatson, daughter of John Beatson Bell, Esq., Writer to the Signet.

DEATHS.

CARTWRIGHT—On May 30, at Cachar, Bengal, aged 17, John Barrow Bascome, son of Henry Cartwright, Esq., of the Middle Temple, formerly Special Justice and Crown Commissioner at the Bahama and Turks Islands.

DEWAR—On July 19, James William Dewar, Major 97th Regiment, son of the late Sir James Dewar, Chief Justice, Bombay, aged 33.

PEARSON—On July 19, at Edinburgh, Andrew Adam Pearson, Esq., of Luce, son of the late Alexander Pearson, Esq., Writer to the Signet.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

MACKENZIE, GEORGE, Gent., Jamaica, £354 10*s.* 10*d.* Consols.—Claimed by SUSANNA LOWE, wife of the Hon. Francis Lowe, of Chapelton, Jamaica, the administratrix of the said George Mackenzie.

THOMPSON, JOHN, Tallow Chandler, Waltham Abbey, £50 New Three per Cents.—Claimed by SAMUEL THOMPSON, the acting executor of John Thompson, who was the sole executor of the above-named John Thompson.

London Gazettes.

Windings-up of Joint Stock Companies.

TUESDAY, July 23, 1861.

UNLIMITED IN CHANCERY.

LIFE ASSURANCE TREASURY.—Petition for winding-up, presented July 19, will be heard before V.C. Wood on Aug. 2. Gibbs & Tucker, 17, Clement's-lane, Solicitors for the petitioner.

RISCA COAL AND IRON COMPANY.—The Master of the Rolls will proceed, on July 30, at 11, to make a call of £75 per share on all contributories settled on the list.

FRIDAY, July 26, 1861.

LIMITED IN BANKRUPTCY.

DISTRICT SAVINGS BANK (LIMITED).—Petition for winding up, presented July 24, will be heard before Commissioner Fane, Basinghall-street, Aug. 10.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, July 23, 1861.

BAKER, AMY, Widow, Sevenoaks, Kent. Holcroft, Solicitor, Sevenoaks. Sept. 7.

BAKER, RAYNER, Plumber and Glazier, Sevenoaks, Kent. Holcroft, Solicitor, Sevenoaks. Sept. 7.

BLAKE, PHILIP, Merchant, Lymington, Hampshire. Moore & St. Barbe, Solicitors, Lymington. Oct. 1.

GOUGH, WILLIAM HENRY, Chemist, Yoxford, Suffolk. Cavell & Son, Solicitors, Saxmundham, Suffolk. Aug. 12.

HATWELL, JOSEPH, Retired Brewer, 18, Lonsdale-road, Ledbury-road, Notting-hill, Middlesex. Burgoynes, Milnes, & Burgoyne, Solicitors, 160, Oxford-street, London, W. Sept. 3

STUBBS, JOHN, Farmer, Saltfleetby, Lincolnshire. Allison & Sons, Solicitors, Louth. Oct. 8.

TWAITES, MARY BOWE, Widow, formerly of Appleby, Westmoreland, afterwards, of Penrith, Cumberland, afterwards of Wolsingham, Durham, and late of Preston, Lancashire. Weymss, Solicitor, Appleby. Aug. 21.

FRIDAY, July 26, 1861.

BAKER, MARGARET (widow of the late Lieutenant Samuel Baker, R.N., of St. Helier's, Jersey), 52, Winchester-street, Pimlico, Middlesex. Kempster, Solicitor, 1, Portsmouth-place, Lower Kennington-lane, Lambeth, Surrey. Sep. 1.

BLAKE, PHILIP, Merchant, Lymington, Southampton. Moore & St. Barbe, Solicitors, Lymington. Oct. 1.

BURROUGHS, SOPHIA, Spinster, 25, Wellington-terrace, St. John's Wood, St. Marylebone, Middlesex. Robinson, Solicitor, 17, Ironmonger-lane, Cheapside. Nov. 1.

DOWNHAM, JOSEPH, otherwise JOSEPH DOWNHAM HAYES, Farmer, Chrishall, Essex. Thurnall & Nash, Solicitors, Royston, Herts. Oct. 10.

LOWRY, JANE, Widow, Crescent, Carlisle. Hough, Solicitor, Carlisle. Sep. 7.

MCISAAC, SARAH, late of 10, Inkerman-terrace, Kensington, and formerly of Cloudesley-terrace, Cloudesley-square, Islington, Middlesex. T. Hatch, Esq., Coptford, near Colchester, Essex, and C. Bull, Gent., 24, Bedford-row, Middlesex, Executors. Sep. 1.

POLAK, SAMUEL, Outfitter, formerly of Newport, Monmouthshire, but late of Brompton-crescent, Brompton, Middlesex. Lumley & Lumley, Solicitors, 2, Clifford-street, Bond-street; July 22.

WALL, ANNE, Spinster, Harcourt Villa, Malvern Wells, Hanley Castle, Worcestershire. Humfrys, Solicitor, Herefordshire. Sep. 26.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, July 23, 1861.

CROSSE, SAMUEL MASSEY, Hosiery Manufacturer, Tewkesbury, Gloucestershire. Lewis *v.* Crosse, V.C. Stuart. Nov. 1.

FRIDAY, July 26, 1861.

BARKER, FIELD DUNN, Wine Merchant, Cambridge. Marsh *v.* Shallow, M.R. Nov. 2.

BARRETT, AARON, Builder, Tonbridge Wells, Kent. Barrett *v.* Barrett, M.R. Nov. 2.

BARRETT, CHARLOTTE, Widow, Tonbridge Wells, Kent. Barrett *v.* Barrett, M.R. Nov. 2.

SLOANE, THOMAS COPLAND, Master Mariner, Bishopswearmouth, Durham. Sloane *v.* Sloane, V.C. Kindersley. Nov. 4.

WYNN, JAMES, Boot and Shoe Maker, Duke-street, Tooley-street, Surrey. Aldham *v.* Wynn, V.C. Stuart. Aug. 5.

Assignments for Benefit of Creditors.

TUESDAY, July 16, 1861.

BREWER, RICHARD LAWRENCE, Bookseller and Tobacconist, 162, Fenchurch-street, London. *Sol.* Burr, 12, Paternoster-row, London. July 3.

BURRIN, THOMAS WILLIAMS, Wine Merchant, 5, Martin's-lane, Cannon-street, London. *Sols.* Ingle & Goody, 37, King William-street, London-bridge. July 19.

CLARK, WILLIAM THOMAS, Draper, Coltishall, Norfolk. *Sol.* Fox, Norwich. July 9.

EVANS, SAMUEL, Grocer, Catherine-street, Devonport. *Sol.* Greenway, Plymouth. July 20.

FLINT, GEORGE, Draper, 40, Cheapside, London. *Sol.* Turner, 68, Aldermanbury. June 21.

HAIGH, WILLIAM BLACKETT, Engineer, Hill-street, Oldham, Lancashire. *Sol.* Ponsonby, Clegg-street, Oldham. July 13.

HALL, RALPH NEWSHAM, Grocer, 29, Bank-parade, Chapel-street, Salford. *Sol.* Horner, 60, King-street, Manchester. July 8.

HOLMES, WILLIAM STEWART, Grocer, Manchester. *Sol.* Horner, 60, King-street, Manchester. July 13.

JOHNSON, WILLIAM, Sail Maker, Dover. *Sols.* Drake & Son, 38, Walbrook. June 24.

MACDUFF, JOHN CAMERON, Draper, 5, Victoria-street, Bristol. *Sol.* Hobbs, Bank of England-chambers, Broad-street, Bristol. June 24.

FRIDAY, July 26, 1861.

DAVIES, WILLIAM, Grocer, Bronfreissa, Llanerchavron, Cardigan, and late of Llwyngroes, Garthell. *Sol.* Lloyd, Lampeter, Cardigan. June 29.

JOSLIN, WILLIAM, Boot and Shoe Maker, Kelvedon, Essex. *Sols.* Gepp & Veley, Chelmsford. July 4.

LEETE, CHARLES WILLIAM, Furniture Dealer and Appraiser, Liverpool. *Sol.* Cotton, 48, Castle-street, Liverpool. July 1.

LLOYD, EDWIN, Joiner and Builder, Ffynnon Yswallt, Whitford, Flint. *Sol.* Williamson, Holywell, Flint. June 26.

PLANT, RALPH, Sen., JAMES PLANT, RALPH PLANT, Jun., and ABRAHAM TAYLOR, Earthenware Manufacturers, Sneyd-green, Burslem, Staffordshire. *Sol.* Udall, Newcastle-under-Lyme. June 28.

Bankrupts.

TUESDAY, July 23, 1861.

GIBB, WILLIAM, Fishmonger, 2, Above Bar, and 33, Oxford-street, Southampton (Thomas & William Gibb). *Com.* Fane: Aug. 2, at 12.30, and Sept. 6, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Messrs. Field, 40, Ely-place, Holborn. *Pet.* July 19.

HILL, GEORGE, Grocer and Tea Dealer, South Milford, Yorkshire. *Com.* West: Aug. 2 and 30, at 11; Leeds. *Off. Ass.* Young. *Sol.* Naylor, Leeds. *Pet.* July 11.

PROCTOR, WILLIAM, Joiner and Builder, New Wortley, Leeds. *Com.* West: Aug. 2 and 30, at 11; Leeds. *Off. Ass.* Young. *Sol.* Smith, Bank-street, Leeds. *Pet.* July 20.

SIDDALL, JOSEPH, Auctioneer, Wath-upon-Dearne, Yorkshire. *Com.* West: Aug. 3 and 31, at 10; Sheffield. *Off. Ass.* Brewin. *Sols.* Smith & Atkinson, Doncaster, or Bond & Barwick, Leeds. *Pet.* July 19.

TURNER, GEORGE, Brewer and Maltster, New Radford, Nottinghamshire. *Com.* Sanders: Aug. 8 and 23, at 11.30; Nottingham. *Off. Ass.* Harris. *Sols.* Campbell, Burton, & Browne, Nottingham. *Pet.* July 19.

WALTON, WILLIAM PORTER, Corn and Seed Merchant, Kingston-upon-Hull. *Com.* Ayrton: Aug. 14, and Sept. 11, at 12; Kingston-upon-Hull. *Off. Ass.* Carrick. *Sols.* Wells & Smith, Hull. *Pet.* July 15.

WILKINS, THOMAS, Stone Mason and Builder, New Wortley, Leeds. *Com.* Ayrton: Aug. 5, and Sept. 2, at 11; Leeds. *Off. Ass.* Hope. *Sol.* Smith, Leeds. *Pet.* July 20.

WISE, JOHN, Victualler, Stourbridge, Worcestershire. *Com.* Sanders: Aug. 2 and 23, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Prescott, Stourbridge, or Smith, Birmingham. *Pet.* July 18.

FRIDAY, July 26, 1861.

APPLEYARD, DAVID, THOMAS WIGGLESWORTH, JOHN EGERTON, & EBENEZER CLEGG, Machine Makers, Leeds (Appleyard, Wigglesworth, Egerton, & Co.) *Com.* West: Aug. 13 & Sept. 20, at 11; Leeds. *Off. Ass.* Young. *Sols.* Ferns & Rooke, Leeds. *Pet.* July 22.

ARNDT, ALBERT, Drysalter & Colourman, 3, Tudor-street, Blackfriars, London. *Com.* Fane: Aug. 5, at 11.30, & Sept. 13, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Abrahams, 17, Gresham-street. *Pet.* July 15.

ASTILL, HENRY, Ale & Porter Merchant, Oil & Colour Man, & Brush Dealer, Loughborough, Leicestershire. *Com.* Sanders: Aug. 6 & Sept. 3, at 11.30; Nottingham. *Off. Ass.* Harris. *Sol.* Giles, Loughborough. *Pet.* July 2.

BOUSFIELD, WALTER STANTON, Engineer, Alpha Works, Isle of Dogs, Middlesex, and late of Grove-lane, Dulwich, Surrey, *Com.* Fane: Aug. 5, at 12, & Sept. 6, at 11.30; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Linklaters & Hackwood., 7, Walbrook. *Pet.* July 20.

BRYCE, DAVID, Bookseller & Publisher, 3, Amen-corner, Paternoster-row, London. *Com.* Fane: Aug. 5, at 11, & Sept. 6, at 12.30; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Terrell & Chamberlain, 30, Basinghall-street. *Pet.* July 22.

CAUDWELL, JAMES, Coal & Coke Merchant, Southwell, Nottinghamshire. *Com.* Sanders: Aug. 8 & Sept. 3, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Shillow, Birmingham. *Pet.* July 23.

COCKMAN, HENRY, late Oilman, 32, Aldersgate-street, but now Shopkeeper, 1, Dashwood-place, Bexley New Town, Kent. *Com.* Fane: Aug. 6, at 12, & Sept. 13, at 1.30; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Lofty, Potter, & Son, 36, King-street, Cheapside. *Pet.* July 24.

COURLAY, THOMAS, Draper, Bradford. *Com.* West: Aug. 13 & Sept. 20, at 11; Leeds. *Off. Ass.* Young. *Sols.* Terry & Watson, Bradford, or Bond & Barwick, Leeds. *Pet.* July 24.

HARRISON, RICHARD, & JOHN SHERRATT, Builders & Timber Merchants, St. Helens, Lancashire. *Com.* Perry: Aug. 7 & Sept. 3, at 11; Liverpool. *Off. Ass.* Morgan. *Sols.* Ansdell. St. Helens, or Evans, Son, & Sandy, Commerce-court, Lord-street, Liverpool. *Pet.* July 8.

HUDSON, THOMAS, Surgeon & Apothecary, Brigstock, Northamptonshire. *Com.* Fane: Aug. 6, at 12.30, & Sept. 13, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Tarrant, Bond-court, Walbrook, or Whitehead & French, Cambridge. *Pet.* July 25.

IBBOTT, JAMES, Builder, Somersham, Huntingdonshire. *Com.* Fane: Aug. 9, at 12.30, & Sept. 13, at 12: Basinghall-street. *Off. Ass.* Whitmore. *Sols.* J. & C. Cole, 36, Essex-street, Strand. *Pet.* July 25.

LARGE, JOHN, Cattle & Sheep Salesman, Ufton, Berks. *Com.* Fane: Aug. 5, at 1, & Sept. 6, at 1.30; Basinghall-street. *Off. Ass.* Whitmore *Sols.* Lovell & Co., Gray's-inn, or Henderson, Reading, Berks. *Pet.* July 23.

LOWELL, CHARLES, Glass Merchant, 20, Great Marlborough-street, Regent-street, Middlesex. *Com.* Fane: Aug. 6, at 1, & Sept. 13, at 12.30; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Porter, 57, Skinner-street, Snow-hill. *Pet.* July 25.

PILGRIM, ABEL, Builder & Contractor, Stanley-road, St. Thomas's-square, Hackney, Middlesex. *Com.* Fane: Aug. 5 & Sept. 6, at 2; Basinghall-street. *Off. Ass.* Whitmore. *Sol.* Pearpoint, 50, Leicester-square. *Pet.* July 24.

RHODES, JOHN, Dealer in Coal, Birkenhead, Cheshire. *Com.* Perry: Aug. 8 & Sept. 3, at 11; Liverpool. *Off. Ass.* Bird. *Sol.* Quinne, Liverpool. *Pet.* July 22.

RUSSELL, FRANCIS JEFFRIES, Linen Draper, Salisbury, Wilts. *Com.* Fane: Aug. 5, at 12, & Sept. 13, at 2; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Venning, Naylor, & Robins, 9, Tokenhouse-yard, or Cobb & Smith, Salisbury. *Pet.* July 25.

STEVENS, JAMES, Jeweller and Silversmith, Derby. *Com.* Sanders: Aug. 8, and Sept. 3, at 11.30; Nottingham. *Off. Ass.* Harris. *Sols.* Gamble & Leech, Full-street, Derby. *Pet.* July 25.

TITCHMARSH, JOHN, Millier and Seed Merchant, Royston, Kneesworth, Bassingbourne, Cambridgeshire. *Com.* Fane: Aug. 6, and Sept. 6, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Doyle, 2, Verulam-buildings, Gray's-inn; or Thurnall & Nash, Royston; or Foster, Hertford. *Pet.* July 8.

WHITEHEAD, JOHN, Joiner and Builder, Sheffield. *Com.* West: Aug. 17, and Sept. 21, at 10; Sheffield. *Off. Ass.* Brewin. *Sol.* Unwin, Sheffield. *Pet.* July 20.

WRIGHT, JOHN, Grocer, Butcher, and Timber Dealer, Redditch, Worcestershire. *Com.* Sanders: Aug. 9, and Sept. 6, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Richards, Redditch; or James & Knight, Birmingham. *Pet.* July 22.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, July 23, 1861.

BOTTING, EDWIN, Grocer, Brighton. Aug. 15, at 11.30; Basinghall-street.—EDGE, THOMAS, Gas Meter Manufacturer, 59, Great Peter-street, and 39, Vincent-square, Westminster. Aug. 5, at 1; Basinghall-street.—JOSEPH, CHARLES HENRY, (otherwise called and known by the name of Charles Henry Josiffe) Hotel and Eating House Keeper, 74 & 75, Strand, Middlesex. Aug. 3, at 11.30; Basinghall-street.—MOORE, JOHN, Ironmonger, 86, Charlton-street, Euston-road, Middlesex. Aug. 6, at 12; Basinghall-street.—PONTEY, JAMES, Licensed Victualler, Chester-road, Hulme, Manchester. Aug. 14, at 12; Manchester.—PORTER, JOSEPH, JOSEPH WALMSLEY PORTER, THOMAS WALMSLEY PORTER, & ROBERT ROGERS, Screw Bolt Manufacturers, Salford, Lancashire (Porters & Co.) Sept. 3, at 12; Manchester.—PRICE, EDWARD, Grocer and Provision Factor, Warminster, Wilts. Aug. 13, at 12.30; Basinghall-street.—TAYLOR, JAMES THOMAS, Grocer, 72, New Church-street, Marylebone, Middlesex, previously Grocer and Cheesemonger, 261, High-street, Poplar. Aug. 14, at 1; Basinghall-street.

FRIDAY, July 26, 1861.

CLARK, WILLIAM, Jun., Timber Merchant, 1, Southwark-bridge-road, Southwark, and 12, Rockingham-row, New Kent-road, Surrey. Aug. 7, at 12; Basinghall-street.—COPELAND, ELISABETH, Widow, Grocer and Druggist, March, Cambridgeshire. Aug. 6, at 1.30; Basinghall-street.—THOMAS, ROBERT, and JAMES INNES, Drysalters and Oil and Colour Men, Manchester. Aug. 20, at 12; Manchester.